

TAX LAW

LAWS 1909, CHAP. 62.

AN ACT in relation to taxation, constituting chapter sixty of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor.

Passed, three-fifths being present.

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

CHAPTER 60 OF THE CONSOLIDATED LAWS

TAX LAW

- Article 1. Short title; definitions; miscellaneous (§§ 1-49*2).
8. Department of taxation and finance; commissioner of taxation and finance (§§ 170-180).
9. Corporation tax (§§ 182--207-b).
- 9-A. Franchise tax on business corporations (§§ 208--219-a).
11. Tax on mortgages (§§ 250-267).
12. Tax on transfers of stock and other corporate certificates (§§ 270--281-a).
- 12-A. Tax on gasoline and similar motor fuel (§§ 282--289-f).
13. Tax on unrelated business income (§§ 290-296).
- 13-A. Tax on petroleum businesses (§§ 300-315).
14. Laws repealed; when to take effect (§§ 320-321).
18. Taxes on alcoholic beverages (§§ 420-445).
19. Boxing and wrestling exhibitions tax (§§ 451-456).
20. Tax on cigarettes and tobacco products (§§ 470--482-a).
- 20-A. Cigarette marketing standards (§§ 483-489).
- 20-B. Excise tax on medical marihuana (§§ 490-491).
- 20-C. Excise tax on sale of opioids (§§ 497-499).
21. Highway use tax (§§ 501-515).
- 21-A. Tax on fuel use (§§ 521-528).
22. Personal income tax (§§ 601-699).
23. Metropolitan commuter transportation mobility tax (§§ 800-807).
24. Employer compensation expense program (§§ 850-857).

- 24-A. Pass-through entity tax (§§ 860-866).
- 24-B. City pass-through entity tax (§§ 867-873).
- 25. Reciprocal enforcement of tax liabilities (§§ 901-903).
- 26. Estate tax (§§ 951-999-a).
- 27. Corporate tax procedure and administration (§§ 1080-1097).
- 28. Sales and compensating use taxes (§§ 1101-1150).
- 28-A. Special tax on passenger car rentals (§§ 1160-1167).
- 28-B. Simplified sales and use tax administration (§§ 1170-1178).
- 28-C. Supplemental tax on vapor products (§§ 1180-1186).
- 28-D. Special tax on peer-to-peer car sharing (§§ 1190-1197).
- 29. Taxes authorized for cities, counties and school districts (§§ 1200-1264).
- 29-A. Tax on medallion taxicab trips in the metropolitan commuter transportation district (§§ 1280-1290).
- 29-B. State assessment fee on transportation network company prearranged trips (§§ 1291-1298).
- 29-C. Congestion surcharge (§§ 1299--1299-I).
- 30. City personal income tax (§§ 1300-1313).
- 30-A. City income tax surcharge (§§ 1320-1333)
- 30-B. City earnings tax on nonresidents (§§ 1340-1343).
- 30-C. City surcharge on property that does not serve as a primary residence (§§ 1350-1356).
- 31. Real estate transfer tax (§§ 1400-1423).
- 31-A. Tax on real property transfers for transportation assistance (§§ 1424-1437).
- 31-A-1. Tax on real estate transfers in the town of Red Hook (§§ 1438-a--1438-p).
- 31-A-2. Tax on real estate transfers in the county of Columbia (§§ 1439-a--1439-p).
- 31-A-2*2. Tax on real estate transfers in the town of Chatham (§§ 1439-a*2--1439-p*2).
- 31-A-2*3. Tax on real estate transfers in the town of Fishkill (§§ 1439-a*3--1439-p*3).
- 31-A-3. Tax on real estate transfers in the town of Northeast

- (§§ 1439-aa--1439-pp).
- 31-A-4. Tax on real estate transfers in the town of Chester
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- 31-A-4*2. Tax on real estate transfers in the town of Orangetown
(§§ 1439-aaa*2--1439-ppp*2).
- 31-B-1. Tax on real estate transfers in the county of Essex
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- 31-C. Tax on real estate transfers in the county of Broome
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- 31-D. Tax on real estate transfers in towns in the Peconic
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- 31-E. Tax on real estate transfers in the county of Nassau
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- 31-J. Tax on real estate transfers in the town of Copake
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- 31-K. Tax on real estate transfers in the town of Clarkstown
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- 33. Franchise taxes on insurance corporations
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ARTICLE 1

SHORT TITLE; DEFINITIONS; MISCELLANEOUS

- Section 1. Short title.
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§ 1. Short title. This chapter shall be known as the "Tax Law."

§ 2. Definitions. 1. Unless otherwise expressly stated or unless the context or subject matter otherwise requires, "tax department" or "department", as used in this chapter, means the department of taxation and finance, "commissioner" means the commissioner of taxation and finance or his delegate, and "tax commission" or "commission", in all matters pertaining to the administration of the division of tax appeals, means the tax appeals tribunal and in all other matters means the commissioner of taxation and finance.

2. "Comptroller" as used in this chapter means the state comptroller.

3. "County treasurer" includes any officer performing the duties devolving upon such office under whatever name.

4. "Infant" or "minor" as used in this chapter means a person who has not attained the age of eighteen years.

5. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

6. "Partnership and partner," unless the context requires otherwise, shall include, but shall not be limited to, a limited liability company and a member thereof, respectively.

7. "REIT" means a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code.

8. "RIC" means a regulated investment company as defined in section eight hundred fifty-one of the internal revenue code.

9. "Captive REIT" means a REIT that is not regularly traded on an established securities market, and (more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single entity treated as an association taxable as a corporation under the Internal Revenue Code that is not exempt from federal income tax and is not a REIT. Any voting stock in a REIT that is held in a segregated asset account of a life insurance corporation (as described in section 817 of the internal revenue code) shall not be taken into account for purposes of determining whether a REIT is a captive REIT. None of the following entities shall be considered an association taxable as a corporation for purposes of this subdivision:

(a) any listed Australian property trust (meaning an Australian unit trust registered as a "managed investment scheme" under the Australian Corporations Act in which the principal class of units is listed on a

recognized stock exchange in Australia and is regularly traded on an established securities market), or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of such trust; or

(b) any qualified foreign entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:

(i) at least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets (as defined at subparagraph (B) of paragraph (5) of subsection (c) of section eight hundred fifty-six of the internal revenue code, thereby including shares or certificates of beneficial interest in any real estate investment trust), cash and cash equivalents, and United States Government securities;

(ii) the entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

(iii) the entity distributes at least eight-five percent of its taxable income (as computed in the jurisdiction in which it is organized) to the holders of its shares or certificates of beneficial interest on an annual basis;

(iv) not more than ten percent of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

(v) the entity is organized in a country which has a tax treaty with the United States.

10. "Captive RIC" means a RIC (a) that is not regularly traded on an established securities market, and (b) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a RIC. Any voting stock in a RIC that is held in a segregated asset account of a life insurance corporation (as described in section 817 of the internal revenue code) shall not be taken into account for purposes of determining whether a RIC is a captive RIC.

11. The term "combinable captive insurance company" means an entity that is treated as an association taxable as a corporation under the internal revenue code (a) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the internal revenue code and not exempt from federal income tax; (b) that is licensed as a captive insurance company under the laws of this state or another jurisdiction; (c) whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent and/or members of its affiliated group; and (d) fifty percent or less of whose gross receipts for the taxable year consist of premiums from arrangements that constitute insurance for federal income tax purposes. For purposes of this subdivision, "affiliated group" has the same meaning as that term is given in section 1504 of the internal revenue code, except that the term "common parent corporation" in that section is deemed to mean any person, as defined in section 7701 of the internal revenue code and references to "at least eighty percent" in section 1504 of the internal revenue code are to be read as "fifty percent or more;" section 1504 of the internal revenue code is to be read without regard to the exclusions provided for in subsection (b) of that section; "premiums" has the same meaning as that term is given in paragraph one of subdivision (c) of section fifteen hundred ten of this chapter, except that it includes consideration for annuity contracts and excludes any part of the consideration for insurance, reinsurance or annuity contracts that do not provide bona fide insurance, reinsurance or annuity benefits; and "gross receipts" includes the amounts included in gross receipts for purposes of section 501(c) (15) of the internal revenue code, except that those amounts also include all premiums as defined in this subdivision.

§ 3. Exemption from certain taxes granted to certain corporations engaged in the operation of vessels in foreign commerce. All corporations incorporated under the laws of the state of New York, exclusively engaged in the operation of vessels in foreign commerce, are exempted from all taxation in this state, for state and local purposes, upon their capital stock, franchises and earnings.

§ 4. Exemption from certain excise and sales taxes granted to the United Nations. Excise and sales taxes imposed by the state upon the sale of tangible personal property shall not be exacted or required to be paid by the United Nations upon and with respect to any sale of tangible personal property hereafter made, provided the property is acquired for the official use of the United Nations; and the provisions of any law now in force or hereafter enacted imposing any such tax shall not apply to sales of tangible personal property to the United Nations. The state tax commission shall make such reasonable rules and regulations as may be necessary to give full force and effect to the provisions of this section.

§ 5. Obtaining and furnishing taxpayer identification information. 1. Definitions. For purposes of this section, the following terms shall mean:

(a) "License" shall include the whole or part of any covered agency permit, certificate, approval, registration, charter or similar form of permission to engage in a profession, trade, business or occupation and any notification required to be made to any covered agency that a profession, trade, business or occupation is being engaged in or is expected to be commenced. However, such term shall not include any original charter or certificate of incorporation granted by any covered agency.

(b) "Person" shall mean an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of the foregoing. However, such term shall not include any public corporation, corporation formed other than for profit or unincorporated not-for-profit entity, except such term shall include an education corporation of the type dealt with in section two hundred twenty-one of the education law, an education corporation subject to article one hundred one of the education law and a cooperative corporation.

* (c) "State agency" shall mean the state of New York, any department, board, bureau, commission, division, office, council or agency thereof, a public authority or a public benefit corporation. "State agency" shall also include the New York Waterfront Commission.

* NB Effective June 30, 2024 until enactment by New Jersey of legislation having an identical effect

* (c) "Covered agency" shall mean the state of New York, any county of the state of New York, any department, board, bureau, commission, division, office, council or agency of the state or any such county, a public authority, a public benefit corporation, the port authority of New York and New Jersey or the waterfront commission of New York harbor. When a county is wholly included within a city, then the term "county" shall be read to include the city. "Covered agency" shall also include the New York Waterfront Commission.

* NB Effective upon enactment by New Jersey of legislation having an identical effect

2. Requiring information. Notwithstanding any other provision of law, every covered agency shall, as part of the procedure for granting, renewing, amending, supplementing or restating the license of any person or at the time the covered agency contracts to purchase or purchases goods or services or leases real or personal property from any person, require that each such person provide to the covered agency such person's federal social security account number or federal employer identification number, or both such numbers when such person has both such numbers, or, where such person does not have such number or numbers, the reason or reasons why such person does not have such number or numbers. Such numbers or reasons shall be obtained by such covered agency as part of the administration of the taxes administered by the commissioner for the purpose of establishing the identification of persons affected by such taxes.

3. Furnishing information to commissioner. (a) Notwithstanding any other provision of law, a covered agency shall, upon request of the commissioner, furnish to the commissioner the following information with respect to each person covered by subdivision two of this section:

(1) business name or the name under which the applicant for a license

or licensee will be licensed or is licensed;

(2) business address or whatever type of address the covered agency requires the applicant for a license or the licensee to furnish to it; and

(3) federal social security account number or federal employer identification number, or both such numbers where such person has both such numbers, or the reason or reasons, furnished by such person, why such person does not have such number or numbers.

(b) The reports required under paragraph (a) of this subdivision shall be submitted on a compatible magnetic tape file or in some other form which is mutually acceptable to the covered agency and the commissioner.

4. Report not open to public inspection. Notwithstanding article six of the public officers law or any other provision of law, the report to be furnished by the covered agency to the commissioner pursuant to subdivision three of this section shall not be open to the public for inspection.

§ 5-a. Certification of registration to collect sales and compensating use taxes by certain contractors, affiliates and subcontractors. 1. For purposes of this section, the following terms shall have the specified meanings:

(a) "Affiliate" means a person which directly, indirectly or constructively

(1) controls another person;

(2) is controlled by another person; or

(3) is, along with another person, under the control of a common parent.

"Control" means possession of the power to direct, or cause the direction of, the management and policies of another person.

(b) "Commodities" means commodities as defined in article eleven of the state finance law.

(c) (1) "Contract" means an agreement between a contractor and a covered agency for the purchase by the covered agency, pursuant to article eleven of the state finance law, of commodities or services having a value in excess of one hundred thousand dollars.

The term "contract" shall also include a centralized contract, as defined in article eleven of the state finance law, with a value in excess of one hundred thousand dollars.

(2) The term "contract" shall not include:

(A) a purchase by a covered agency of commodities or services with a value in excess of one hundred thousand dollars based upon a formal mini-bid solicitation pursuant to a centralized contract;

(B) a grant or an intergovernmental agreement; or

(C) a purchase of commodities or services from a "preferred source," as such term is defined in article eleven of the state finance law.

(3) Multiple purchases of commodities or services by a covered agency from the same contractor during a state fiscal year shall not be aggregated for purposes of determining whether the greater than one hundred thousand dollar threshold described in this subdivision has been met.

(d) "Contractor" means a person awarded a contract.

(e) "Covered agency" means a "state agency" for purposes of article eleven of the state finance law, the legislature, the judiciary, or a public authority or public benefit corporation at least one of whose members is appointed by the governor.

(f) "Department" means the department of taxation and finance.

(g) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, or corporation; provided, however, that a "person" shall not include a "public corporation" or an "education corporation," as such terms are defined in section sixty-six of the general construction law, a not-for-profit corporation whose contracts are subject to approval in accordance with article eleven-B of the state finance law, a board of cooperative educational services created pursuant to article forty of the education law, or a soil and water conservation district created pursuant to section five of the soil and water conservation districts law.

(h) "Sales and compensating use taxes" means state and local sales and compensating use taxes imposed by article twenty-eight and pursuant to the authority of article twenty-nine of this chapter, which are administered by the commissioner.

(i) "Sales tax quarter" means a quarterly period ending on the last

day of February, May, August or November.

(j) "Services" means services as defined in article eleven of the state finance law.

(k) "Subcontractor" means a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.

(l) "State" means the state of New York.

(m) "Taxable services" means services, the receipts from the sale of which are taxable by article twenty-eight or article twenty-nine of this chapter.

(n) The terms "receipts," "sale," "tangible personal property" and "vendor" have the meanings given in article twenty-eight of this chapter.

2. (a) Notwithstanding any provision of law to the contrary, before a contract may take effect, the contractor must comply with the requirements of subparagraphs one and two of this paragraph.

(1) The contractor must file a written certification with the department, made under penalty of perjury, stating that:

(A) if the contractor made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during the immediately preceding consecutive four sales tax quarters, the contractor is registered for sales and compensating use tax purposes with the department under sections eleven hundred thirty-four and twelve hundred fifty-three of this chapter. If the contractor did not make sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during such four sales tax quarters, then the contractor shall so certify;

(B) if any affiliate of the contractor made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during the immediately preceding consecutive four sales tax quarters, to the best of the contractor's knowledge, each such affiliate is registered for sales and compensating use tax purposes with the department under sections eleven hundred thirty-four and twelve hundred

fifty-three of this chapter. If the contractor does not have any affiliates, or does not have any affiliates which made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during such four sales tax quarters, then the contractor shall so certify; and

(C) if any subcontractor made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during the immediately preceding consecutive four sales tax quarters, to the best of the contractor's knowledge, each such subcontractor is registered for sales and compensating use tax purposes with the department under sections eleven hundred thirty-four and twelve hundred fifty-three of this chapter. If the contractor does not have any subcontractors, or there are no subcontractors which made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during such four sales tax quarters, then the contractor shall so certify.

(D) The certification required by this subparagraph shall include such additional information as the department deems necessary for the proper administration of this section.

(E) The certification required by this subparagraph need only be filed with the department once and, once filed, shall be deemed to satisfy the requirements of this subparagraph for purposes of any subsequent contract to which the contractor is a party; provided, however, that if the contractor, or an affiliate or subcontractor, is not certified as registered with the department for sales and compensating use tax purposes on the contractor's original certification, and such contractor, affiliate or subcontractor makes sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during any consecutive four sales tax quarters which follow the sales tax quarter in which the contractor's original certification was made, then the contractor shall, as soon as possible after such occurrence, file an amended written certification with the department, made under penalty of perjury, indicating that such contractor,

affiliate or subcontractor, as applicable, is registered with the department for sales and compensating use tax purposes.

(2) The contractor shall also provide the procuring covered agency with a written certification, made under penalty of perjury, stating that:

(A) the contractor has filed the certification prescribed by this section with the department, and that such certification is correct and complete, or

(B) such certification is not required to be filed with the department, and explaining the reasons for such determination.

(C) the certification required by this subparagraph shall be included in the procurement record (as such term is defined in article eleven of the state finance law), or similar documentation if the state comptroller is not required by law to approve the contract.

(D) any question as to the accuracy of the contractor certification described in clause (B) of this subparagraph shall be resolved by the contracting covered agency, in consultation, as necessary, with the state comptroller and the department.

(b) A contractor, affiliate of the contractor, or subcontractor which registers for sales and compensating use tax purposes under sections eleven hundred thirty-four and twelve hundred fifty-three of this chapter in order to comply with the provisions of this subdivision shall be a vendor and shall comply with and be subject to the provisions of articles twenty-eight and twenty-nine of this chapter.

(c) The certification requirements prescribed by this subdivision in order for a contract to take effect shall be in addition to any other requirements prescribed by law relating to the formation of contracts to which a covered agency is a party.

3. (a) If a contract has taken effect, and the terms of such contract provide that it may be renewed upon expiration of an initial or subsequent term, then the contractor shall, no later than the day prior to the commencement date of the applicable renewal term, certify to the contracting covered agency in writing, and under penalty of perjury, that:

(1) the contractor has filed the certification prescribed by this section with the department, and that such certification is correct and

complete, or

(2) that such certification is not required to be filed with the department, and explains the reasons for such determination.

(3) Any question as to the accuracy of the contractor certification described in subparagraph two of this paragraph shall be resolved by the contracting covered agency, in consultation, as necessary, with the state comptroller and the department.

(b) The certification required by paragraph (a) of this subdivision shall be made a part of the procurement record (as such term is defined in article eleven of the state finance law), or similar documentation if the state comptroller is not required by law to approve the contract.

(c) If the contractor fails to make the certification required by paragraph (a) of this subdivision, or if, during the term of the contract, the department or the covered agency discovers that such certification is false, then such failure or false certification shall be a material breach of the contract, and the contract shall be subject to termination if the covered agency determines that such action is in the best interests of the state.

(d) A contractor, affiliate of the contractor, or subcontractor which registers for sales and compensating use tax purposes under sections eleven hundred thirty-four and twelve hundred fifty-three of this chapter in order to comply with the provisions of paragraph (a) of this subdivision shall be a vendor and shall comply with and be subject to the provisions of articles twenty-eight and twenty-nine of this chapter.

4. The provisions of this section shall not apply to a contract if the procuring covered agency and the state comptroller, or other approving authority if the state comptroller is not required to approve the contract, find in writing that the contract is necessary to address an "emergency," within the meaning of article eleven of the state finance law, or to ensure the public health, safety or welfare. Such written finding shall explain the reasons supporting such determination.

§ 6. Filing of electronic warrants and warrant-related records in the department of state. 1. Notwithstanding any provision of this chapter or a related statute to the contrary, all warrants and warrant-related

records issued by the department shall be filed electronically by the department in the department of state. No fee shall be required to be paid for such filings. On the date of the electronic filing of a warrant, as confirmed by the department of state pursuant to subdivision five of this section:

(a) the amount of the tax stated in the warrant shall become a lien upon the title to and interest in all real, personal or other property located in New York state, owned by the person or persons named in the warrant. The lien so created shall:

(i) attach to all real property and rights to real property located in New York state that is owned by the person or persons named in the warrant at any time during the period of the lien, including any real property or rights to real property located in New York state that is acquired by such person or persons after the lien arises; and

(ii) apply to all personal or other property and rights to personal or other property located in New York state that is owned by the person or persons named in the warrant at any time during the period of the lien, including any personal or other property or rights to personal or other property located in New York state that is acquired by such person or persons after the lien arises; and

(b) the commissioner shall, in the right of the people of the state of New York, be deemed to have obtained a judgment against the person or persons named in the warrant for the amount of the tax stated in the warrant.

2. Enforcement of a judgment obtained pursuant to subdivision one of this section shall be as prescribed in article fifty-two of the civil practice law and rules.

3. A written or electronic copy of any electronic warrant or warrant-related record filed in the department of state shall be filed by the department in the office of the clerk of the county named in the warrant or warrant-related record.

4. Notwithstanding any provision of this chapter or a related statute to the contrary, all warrant-related records issued by the department that are authorized by applicable laws, including, but not limited to,

warrant satisfactions, vacatures, amendments and expirations, and any warrant-related record issued by the department on or after July first, two thousand twenty-five that pertains to a warrant filed prior to July first, two thousand twenty-five, shall be filed electronically by the department in the department of state. No fee shall be required to be paid for such filings. A written or electronic copy of the electronic warrant-related record filed in the department of state shall be filed by the department in the office of the clerk of the county named in the warrant-related record.

5. The department shall file warrants and warrant-related records electronically with the department of state. The department of state shall provide electronic notice to the department confirming the date of filing of the warrants and warrant-related records. The department of state shall also make information regarding the warrants and warrant-related records, including the date of filing, available to the public and searchable by the name of the person or persons listed in the tax warrant. Upon request of the commissioner, the department of state shall certify that a warrant or warrant-related record has been filed and the date of such filing.

6. Notwithstanding any other provision of this chapter concerning the place of filing of a tax warrant and the creation thereby of a tax lien and judgment, the provisions of this section shall govern such matters for purposes of any taxes imposed by or pursuant to this chapter.

§ 7. Inapplicability of certain money judgment enforcement procedures.--Notwithstanding any provision in article fifty-two of the civil practice law and rules or any other provision of law to the contrary, the procedures in such article for the enforcement of money judgments shall not apply to the tax commission, any officer or employee of the department of taxation and finance, or the comptroller or any officer or employee of the department of audit and control, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer pursuant to any tax administered by the tax commission, which is imposed by this chapter or by a law enacted

pursuant to the authority of this chapter or article two-E of the general city law.

§ 8. Exemption from taxes granted to REMICs. An entity that is treated for federal income tax purposes as a real estate mortgage investment conduit, hereinafter referred to as a REMIC, as such term is defined in section 860D of the internal revenue code, shall be exempt from all taxation imposed or authorized under this chapter, upon its capital stock, franchises or income. A REMIC shall not be treated as a corporation, partnership or trust for purposes of this chapter. The assets of a REMIC shall not be included in the calculation of any franchise tax liability under this chapter. This provision does not exempt the holders of regular or residual interests, as defined in section 860G of the internal revenue code, in a REMIC from tax on or measured by such regular or residual interests, or on income from such interests.

§ 9. Electronic funds transfer by certain taxpayers remitting withholding taxes. (a) Definitions. For the purposes of this section:

(1) The term "commissioner" means the commissioner of taxation and finance.

(2) The term "educational organization" means a higher educational institution which

(A) is authorized by the New York state board of regents to confer degrees, or

(B) offers a range of registered undergraduate and graduate curricula in the liberal arts and sciences, degrees in two or more professional fields and doctoral programs in at least three academic fields, or

(C) is authorized by the New York state board of regents to offer undergraduate curricula below the baccalaureate level which normally lead to the associate degree,

as such higher educational institutions are described in subdivisions (k), (l) and (m) of section 50.1 of eight New York codes, rules and regulations.

(3) The term "electronic funds transfer" means any transfer of funds,

other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(4) The term "health care provider" means any organization described in article twenty-eight or thirty-six of the public health law, or in article thirty-one of the mental hygiene law.

(5) The term "payment of tax" means the amount of tax that is actually remitted upon the filing of a withholding tax return, or is actually remitted for the purposes of obtaining an extension to file such a return.

(6) The term "reconciliation of withholding" means the quarterly combined withholding, wage reporting and unemployment insurance return required to be filed for the last calendar quarter of each year, as prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this chapter.

(b) General rules. (1) Subject to the requirements contained in subdivisions (c) and (d) of this section, the commissioner shall require by regulation that any payment of tax made by a taxpayer who is required, for either of the semi-annual periods ending June thirtieth or December thirty-first, to deduct and withhold an aggregate of thirty-five thousand dollars or more of withholding taxes pursuant to part V of article twenty-two of this chapter, or pursuant to an equivalent provision enacted under the authority of article thirty, thirty-A or thirty-B of this chapter, or article two-E of the general city law, shall be made, on or before the date prescribed by law, by electronic funds transfer to a bank, banking house or trust company designated by the commissioner. The commissioner shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section one hundred seventy-one-a of this chapter, as added by chapter sixty-nine of the laws of nineteen hundred seventy-eight. Notwithstanding any provision of law to the contrary, any such payment shall be deemed to be made on the date the payment is received by the designated depository of the department; provided, however, that at the election of a taxpayer subject to the provisions of this subdivision, mailing by the taxpayer

of the applicable withholding tax return and a certified check for the amount of the tax liability on or before the second business day prior to the applicable due date otherwise prescribed by law shall fulfill the requirements of this section and shall be deemed to be timely payment of such tax liability and timely filing of such return.

(2) (A) On or before the thirtieth calendar day following the date regulations implementing the provisions of this section become effective, the commissioner shall, by certified mail, notify taxpayers required to participate in the electronic funds transfer program of their responsibilities under such program. The notice shall also specify that the first payment of tax by electronic funds transfer shall be made on an applicable due date occurring on or after thirty calendar days following receipt by the taxpayer of the notice; provided, however, that the taxpayer may select an optional applicable due date occurring no later than sixty calendar days following receipt by the taxpayer of the notice.

(B) (i) By September first, two thousand two, the commissioner shall, by certified mail, notify taxpayers newly required to participate in the electronic funds transfer program during the July first, two thousand two through June thirtieth, two thousand three program period. Such notice shall contain language advising the taxpayer of the enrollment procedure and of the consequences of failure to enroll in such program, as well as of the taxpayer's obligation to enroll in the program within forty-five calendar days of the mailing of the notice unless such taxpayer challenges such determination of required participation by requesting a hearing within forty-five calendar days of the mailing of such notice. In addition, such notice shall specify that such a taxpayer shall make its first payment of tax by electronic funds transfer by an applicable due date in January, two thousand three.

(ii) By June first, two thousand three and by each succeeding June first, the commissioner shall, by certified mail, notify taxpayers newly required to participate in the electronic funds transfer program. Such notice shall contain language advising the taxpayer of the enrollment procedure and of the consequences of failure to enroll in such program, as well as of the taxpayer's right to challenge such determination of required participation provided a hearing is requested within twenty calendar days of the mailing of such notice. In addition, such notice

shall specify that such a taxpayer shall make its first payment of tax by electronic funds transfer by an applicable due date occurring on or after thirty calendar days following receipt by the taxpayer of the notice but no later than sixty calendar days following receipt by the taxpayer of the notice.

(iii) If a taxpayer does not enroll within forty-five or twenty calendar days (as the case may be) of the mailing of the notice provided for in clause (i) or (ii) of this subparagraph or where a taxpayer's challenge to mandatory participation is not sustained and the taxpayer has not enrolled within ten calendar days of notification thereof, the commissioner shall mail another notice, in addition to making other reasonable attempts, to inform the taxpayer of the civil penalty that has been assessed pursuant to subdivision (h) of this section, of the opportunity for abatement of such penalty, and of the future penalties that may result from continued failure to enroll.

(3) Subject to the provisions of subdivision (f) of this section, an electronic funds transfer shall serve as a substitute for the filing of a withholding tax return.

(c) Special rules with respect to health care providers and educational organizations.

(1) The provisions of subdivision (b) of this section shall not apply to health care providers.

(2) All of the provisions of this section shall apply to educational organizations; provided, however, that any payment of tax which is made by an educational organization shall be made by electronic funds transfer on or before the third business day following the date otherwise prescribed by law; and, provided further, that at the election of a taxpayer subject to the provisions of this subdivision, mailing by the taxpayer of the applicable withholding tax return and a certified check for the amount of the tax liability on or before the first business day following the applicable due date otherwise prescribed by law shall fulfill the requirements of this section and shall be deemed to be timely payment of such tax liability and timely filing of such return.

(d) Exemptions. A taxpayer shall be exempt from the requirements contained in subdivision (b) of this section if such taxpayer proves to the satisfaction of the commissioner that aggregate tax withheld,

pursuant to the most recent reconciliation of withholding, is less than one hundred thousand dollars.

(e) Voluntary participation. A taxpayer may file a request with the commissioner to pay any tax administered by such commissioner by electronic funds transfer in accordance with the provisions of this section. Such request shall be in such form as the commissioner shall require and shall be granted under such conditions as the commissioner, by regulation, deems necessary.

* (f) Return substitution. An electronic funds transfer shall not serve as a substitute for the filing of a withholding tax return if the commissioner determines that such substitution will not ensure the proper receipt and crediting of a payment of tax.

* NB Expired December 31, 1992

(g) Confidentiality. The department shall assure the confidentiality of information supplied by taxpayers in effecting electronic funds transfers in accordance with the provisions of section six hundred ninety-seven of this chapter or other applicable provisions of this chapter. The provisions of article six of the public officers law shall not apply to any such information supplied by taxpayers subject to the requirements of this section.

(h) Civil penalty for failure to enroll. If a taxpayer required to participate in the electronic funds transfer program prescribed by this section fails to enroll in such program in accordance with the terms of subparagraph (B) of paragraph two of subdivision (b) of this section, such taxpayer shall pay a penalty equal to five thousand dollars; provided, however, that if such taxpayer enrolls in the program within twenty calendar days after notification of assessment of such penalty is sent by the department by certified mail for program periods beginning on or after July first, two thousand two, then such penalty shall be abated. If such taxpayer continues to fail to enroll in the program after such twenty calendar day period, the taxpayer shall pay an additional penalty of five hundred dollars if the failure is for not more than one month with an additional five hundred dollars for each additional month or fraction thereof during which such failure continues. The penalty provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the withholding taxes referred to in paragraph one of

subdivision (b) of this section; and any reference in the provisions of part VI of article twenty-two of this chapter, which apply to the administration of and procedures with respect to the provisions of this section, shall be deemed also to refer to the penalty provided by this section.

(i) Regulations. The commissioner shall promulgate regulations necessary to implement this section, which regulations shall include, but shall not be limited to, the following:

(1) the different methods of effecting electronic funds transfer messages available to taxpayers. Such methods shall include at least two methods in which the transfer can be effected without any charge to the taxpayer for the electronic funds transfer itself, and one of such methods shall not require the taxpayer to disclose financial institution account information to the department;

(2) the contents of an electronic funds transfer message necessary to ensure the proper receipt and crediting of a tax payment;

(3) the means by which taxpayers will be provided acknowledgements of payments by electronic funds transfer; and

(4) delineation of what shall constitute reasonable cause and absence of willful neglect for purposes of compliance with the provisions of this section, including the inability of a taxpayer, for reasons beyond the taxpayer's control, to utilize any system of electronic funds transfer required pursuant to this section.

§ 10. Electronic funds transfer by certain taxpayers remitting sales and compensating use taxes, prepaid sales and compensating use taxes on motor fuel and diesel motor fuel, and motor fuel and petroleum business taxes. (a) Definitions. For purposes of this section:

(1) The term "commissioner" means the commissioner of taxation and finance.

(2) The term "electronic funds transfer" has the meaning prescribed in paragraph three of subdivision (a) of section nine of this chapter.

(3) The term "federal employer identification number" means the number assigned in accordance with section six thousand one hundred nine of the United States internal revenue code of nineteen hundred eighty-six, and amendments thereto, and regulations promulgated thereunder.

(4) The term "separate New York state employer identification number" means a number assigned by the department which is either a suffix to the federal employer identification number or an identifying number unrelated to the federal employer identification number.

(5) The term "payment of tax" means a payment or payment over of the taxes described in subparagraphs (A), (B) and (C) of paragraph one of subdivision (b) of this section.

(6) The term "taxpayer" means the person required to make a payment of tax.

(b) Participation rules. (1) General. Notwithstanding any other provision of law to the contrary, if, on or after June first of any year, during the June first through May thirty-first period which immediately precedes the previous June first through May thirty-first period, a taxpayer was liable for

(A) more than five hundred thousand dollars of state and local sales and compensating use taxes imposed by article twenty-eight and pursuant to the authority of article twenty-nine of this chapter where such taxes are administered by the commissioner, or

(B) more than five million dollars of prepaid state and local sales and compensating use taxes on motor fuel and diesel motor fuel imposed pursuant to section eleven hundred two of this chapter, or

(C) more than five million dollars of the total of the tax on gasoline and similar motor fuel and the tax on petroleum businesses imposed by and pursuant to the authority of articles twelve-A and thirteen-A of this chapter, then such taxpayer shall make payments of the taxes for which such dollar threshold was met by electronic funds transfer or certified check in accordance with the provisions of subdivision (c) of this section.

(2) Special transitional rule. Notwithstanding the provisions of paragraph one of this subdivision, for purposes of determining whether a taxpayer described in subparagraph (C) of such paragraph shall be required to initially participate in the program prescribed by this section, if such taxpayer was liable for more than three million seven hundred fifty thousand dollars in total article twelve-A and thirteen-A taxes during the September first, nineteen hundred ninety through May thirty-first, nineteen hundred ninety-one period, then such taxpayer shall make payments of tax by electronic funds transfer or certified

check in accordance with the provisions of this section.

(3) Disaggregation. Every taxpayer who is identified by either its own federal employer identification number or its own separate New York state employer identification number shall be treated as a separate taxpayer for purposes of determining whether the dollar thresholds specified in paragraph one or two of this subdivision have been met. A taxpayer seeking a separate New York state employer identification number for a branch or division may apply to the commissioner for such a number. The commissioner, at his or her discretion, may assign such number upon a showing by the taxpayer of a legitimate business purpose for such request.

(4) Hardship. (A) If a taxpayer having liability described in subparagraph (A) of paragraph one of this subdivision can demonstrate to the satisfaction of the commissioner that (i) for the two most recent consecutive quarters, the state and local sales and compensating use taxes properly payable by such taxpayer are less than fifty percent of the state and local sales and compensating use taxes properly payable by such taxpayer for the comparable two quarters of the preceding year and (ii) the sum of such taxpayer's state and local sales and compensating use tax liability for such most recent consecutive quarters together with the product of the state and local sales and compensating use taxes properly payable by such taxpayer for the two consecutive quarters immediately preceding the quarters referred to in clause (i) of this subparagraph multiplied by the percentage arrived at under such clause is less than two hundred fifty thousand dollars in amount, then such taxpayer shall not be required to participate in the program prescribed by this section for the remaining quarters of the sales tax year ending on the next May thirty-first and for the immediately succeeding four sales tax quarters.

(B) If a taxpayer having liability described in subparagraph (B) or (C) of paragraph one of this subdivision can demonstrate to the satisfaction of the commissioner that (i) for the most recent six-month period, (I) the prepaid state and local sales and compensating use taxes on motor fuel and diesel motor fuel or (II) the total article twelve-A and thirteen-A taxes, as the case may be, properly payable by such taxpayer are less than fifty percent of such applicable taxes described in subclause (I) or (II), as the case may be, properly payable by such

taxpayer for the comparable six-month period of the preceding year and (ii) the sum of such taxpayer's liability for such applicable taxes for the most recent six months together with the product of such applicable taxes properly payable by such taxpayer for the six-month period immediately preceding the six-month period referred to in clause (i) of this subparagraph multiplied by the percentage arrived at under such clause is less than two and one-half million dollars in amount, then such taxpayer shall not be required to participate in the program prescribed by this section for the remaining months of the period ending on the next May thirty-first and for the immediately succeeding twelve months.

(D) If a taxpayer required to remit state and local sales and compensating use taxes by electronic funds transfer or certified check pursuant to the provisions of this section can demonstrate to the satisfaction of the commissioner that (i) such taxpayer's liability for state and local sales and compensating use taxes was less than four million dollars during the period described in paragraph one of this subdivision, and (ii) in any two sales tax quarters within the most recent four consecutive sales tax quarters, such taxpayer was a materialman within the meaning of section two of the lien law, primarily engaged in furnishing building materials to contractors, subcontractors or repairmen for the improvement of real property improved or to be improved with a residential dwelling unit, and authorized by such law to file a mechanic's lien upon such real property and improvement, then such taxpayer need not remit state and local sales and compensating use taxes by electronic funds transfer or certified check for the remainder of the program period in accordance with the timing requirements of subdivision (c) of this section, but may instead remit such taxes by electronic funds transfer or certified check at the same time that payment is required to be made for part-quarterly and quarterly returns required to be filed under article twenty-eight and pursuant to the authority of article twenty-nine of this chapter, in the amount required under or pursuant to such articles at such time. The due date prescribed by this subparagraph shall be deemed to be the applicable due date for purposes of this section for taxpayers qualifying under this subparagraph. The provisions of this section shall apply to taxpayers qualifying under this subparagraph, except to the extent that any such

provision is either inconsistent with a provision of this subparagraph or is not relevant to this subparagraph.

(c) Payment rules. (1) Payment by electronic funds transfer or certified check. On or before the third business day following the twenty-second day of each calendar month:

(A) a taxpayer having liability described in subparagraph (A) of paragraph one of subdivision (b) of this section shall, notwithstanding any provision of this chapter to the contrary, remit by electronic funds transfer or certified check: (i) either (I) seventy-five percent of one-third of the state and local sales and compensating use taxes properly payable by such taxpayer for the comparable quarter of the preceding year; or

(II) such taxpayer's total liability for state and local sales and compensating use taxes during the period ending on such twenty-second day of the month, provided, however, that in such instance no penalty or interest shall be payable pursuant to paragraph two of subdivision (g) of this section if such taxpayer timely remits a payment of tax in an amount not less than ninety percent of the taxes as finally determined to be due and payable for such period; and

(ii) (I) for payments of tax due in the month of January, February, April, May, July, August, October or November, such taxpayer's remaining liability, if any, for state and local sales and compensating use taxes for the immediately preceding calendar month; or

(II) for payments of tax due in the month of March, June, September or December, such taxpayer's remaining liability, if any, for state and local sales and compensating use taxes for the immediately preceding sales tax quarter;

(B) a taxpayer having liability described in subparagraph (B) of paragraph one of subdivision (b) of this section shall remit by electronic funds transfer or certified check either:

(i) three-fourths of the prepaid state and local sales and compensating use taxes on motor fuel and diesel motor fuel properly payable by such taxpayer for the comparable month of the preceding year; or

(ii) its total liability for prepaid state and local sales and compensating use taxes on motor fuel and diesel motor fuel during the period ending on such twenty-second day of the month, provided, however,

that in such instance no penalty or interest shall be payable pursuant to paragraph two of subdivision (g) of this section if such taxpayer timely remits a payment of tax in an amount not less than ninety percent of the taxes as finally determined to be due and payable for such period;

(C) a taxpayer having liability described in subparagraph (C) of paragraph one of subdivision (b) of this section shall remit by electronic funds transfer or certified check either:

(i) three-fourths of the total article twelve-A and article thirteen-A taxes properly payable by such taxpayer for the comparable month of the preceding year; or

(ii) its total liability for such taxes during the period ending on such twenty-second day of the month, provided, however, that in such instance no penalty or interest shall be payable pursuant to paragraph two of subdivision (g) of this section if such taxpayer timely remits a payment of tax in an amount not less than ninety percent of the taxes as finally determined to be due and payable for such period.

(2) Filing obligations and payment of remaining liabilities. (A) A taxpayer having liability described in subparagraph (A) of paragraph one of subdivision (b) of this section shall, notwithstanding any provision of this chapter to the contrary, file only the quarterly returns required under article twenty-eight and pursuant to the authority of article twenty-nine of this chapter for each of the periods for which such returns are filed under and pursuant to the authority of such articles; provided, however, that for those months for which a return is not required to be filed pursuant to the provisions of this subparagraph, the making of a payment of tax by electronic funds transfer or certified check covering any period shall be deemed to constitute the filing of a return for purposes of subdivision (b) of section eleven hundred forty-seven of this chapter with respect to such period.

(B) A taxpayer having liability described in subparagraph (B) of paragraph one of subdivision (b) of this section shall file the returns required under section eleven hundred two of this chapter and shall pay to the commissioner the amounts required to be paid with such returns, less the amounts remitted by electronic funds transfer or certified check under this section, for each of the periods for which such returns

are filed under such section.

(C) A taxpayer having liability described in subparagraph (C) of paragraph one of subdivision (b) of this section shall file the returns required under and pursuant to the authority of articles twelve-A and thirteen-A of this chapter and shall pay to the commissioner the amounts required to be paid with such returns, less the amounts remitted by electronic funds transfer or certified check under this section, for each of the periods for which such returns are filed under and pursuant to the authority of such articles.

(3) Payment date; payment by certified check. Payment of tax by electronic funds transfer or certified check shall be made to a bank, banking house or trust company designated by the commissioner. The commissioner shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section one hundred seventy-one-a of this chapter, as added by chapter sixty-nine of the laws of nineteen hundred seventy-eight. Notwithstanding any other provision of law to the contrary, any electronic funds transfer shall be deemed to be made on the date payment is received by the depository of the department, provided, however, that at the election of a taxpayer subject to the provisions of this section, mailing by the taxpayer of a certified check for the amount of the tax liability on or before the second business day prior to the applicable due date prescribed by paragraph one of this subdivision shall fulfill the requirements with respect to payments of tax by electronic funds transfer prescribed by this section and shall be deemed to be timely payment of such tax liability.

(4) Special payment rule. If a taxpayer is liable for payment of taxes described in two or more of subparagraphs (A), (B) and (C) of paragraph one of subdivision (b) of this section, then such taxpayer shall make separate payment by electronic funds transfer or certified check of the taxes described in each of such subparagraphs.

(d) Enrollment and initial payment; duration of participation. Within forty-five days after each June first, the commissioner shall notify by certified or registered mail all taxpayers required to participate in the program prescribed by this section. Such notice shall contain language advising the taxpayer of the enrollment procedure and of the consequences of failure to enroll in such program, as well as of a

taxpayer's right to challenge such determination of required participation provided a hearing is requested within forty days of the mailing of such notice. If a taxpayer does not enroll within forty days of the mailing of such certified or registered notice of required participation or where a taxpayer's challenge is not sustained and the taxpayer has not enrolled within ten days of notification thereof, the commissioner shall mail another notice, in addition to making other reasonable attempts, to inform the taxpayer of the civil penalty that has been assessed pursuant to paragraph one of subdivision (g) of this section, of the opportunity for abatement of such penalty, and of the future penalties that may result from continued failure to enroll and failure to pay by electronic funds transfer or certified check or to file; provided, however, that for the program period beginning December first, nineteen hundred ninety-two through August thirty-first, nineteen hundred ninety-three, the thirty-day period referred to in this sentence shall be read as forty-five days. A taxpayer shall make its first payment of tax by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section for the month of December in nineteen hundred ninety-two, the month of September in nineteen hundred ninety-three and the month of September for any year thereafter. Unless otherwise provided by this section, such taxpayer shall continue to make payments of tax by electronic funds transfer or certified check in accordance with the provisions of this section through the succeeding month of August and shall continue to make such payments of tax for each succeeding September-to-August period where such taxpayer meets the criteria of subdivision (b) of this section and is properly notified by the commissioner pursuant to the enrollment provisions of this subdivision. Provided, however, that:

(1) A taxpayer described in subparagraph (A) of paragraph one of subdivision (b) of this section who is newly required to participate in the program for the September first, nineteen hundred ninety-four through August thirty-first, nineteen hundred ninety-five period shall have forty-five days to enroll in the program and shall make its first payment of tax by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section for the month of December in nineteen hundred ninety-four; and

(2) A taxpayer described in subparagraph (A) of paragraph one of subdivision (b) of this section who is newly required to participate in the program for the September first, nineteen hundred ninety-five through August thirty-first, nineteen hundred ninety-six period shall make its first payment of tax by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section for the month of December in nineteen hundred ninety-five.

(e) Voluntary participation. A taxpayer who is not required to participate in the program prescribed by this section but who is required to remit any of the taxes specified in subparagraph (A), (B) or (C) of paragraph one of subdivision (b) of this section may file a request with the commissioner to remit any of such taxes by electronic funds transfer or certified check in accordance with the provisions of this section. Such request shall be in a form as the commissioner shall require and shall be granted under such conditions as the commissioner in his or her discretion shall deem necessary.

(f) Confidentiality. The department shall assure the confidentiality of information supplied by taxpayers in effecting payments of tax pursuant to this section in accordance with the provisions of sections three hundred fourteen and eleven hundred forty-six of this chapter and any other applicable provisions of law. The provisions of article six of the public officers law shall not apply to any such information supplied by taxpayers subject to this section.

(g) Civil penalties and interest. (1) Failure to enroll. If a taxpayer required to participate in the program prescribed by this section fails to enroll in such program in accordance with the terms set forth in subdivision (d) of this section, such taxpayer shall pay a penalty equal to five thousand dollars; provided, however, that if such taxpayer enrolls in the program within thirty days after notification of assessment of such penalty is sent by the department by certified or registered mail return receipt requested, then such penalty shall be abated. If such taxpayer continues to fail to enroll in the program after such thirty-day period, the taxpayer shall pay an additional penalty of five hundred dollars if the failure is for not more than one month, with an additional five hundred dollars for each additional month or fraction thereof during which such failure continues.

(2) Failure to pay or late payment. (A) A taxpayer required or approved to participate in the program prescribed by this section who fails to make a payment of tax by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section, or who fails to pay any tax required to be remitted on or before such applicable due date shall, in the case of the taxes imposed pursuant to article twenty-eight and pursuant to the authority of article twenty-nine of this chapter, be liable for penalty and interest as prescribed by subparagraphs (i) and (ii) of paragraph one of subdivision (a) of section eleven hundred forty-five of this chapter, and in the case of the taxes imposed by and pursuant to the authority of articles twelve-A and thirteen-A of this chapter, be liable for penalty and interest as prescribed by paragraphs (a) and (b) of subdivision one of section two hundred eighty-nine-b of this chapter.

(B) Notwithstanding any provision of law to the contrary, if a taxpayer described in subparagraph (B) or (C) of paragraph one of subdivision (b) of this section fails to make a payment of tax by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section or fails to pay any tax required to be remitted on or before such applicable due date, as prescribed by subparagraph (A) of this paragraph, and also fails to pay or pay over to the commissioner the amounts required to be paid or paid over with the applicable return described in paragraph two of subdivision (c) of this section due the twentieth day of the following month, then penalty and interest for such additional failure, as provided by subparagraphs (i) and (ii) of paragraph one of subdivision (a) of section eleven hundred forty-five of this chapter or paragraphs (a) and (b) of subdivision one of section two hundred eighty-nine-b of this chapter, as the case may be, shall be computed on the amount equal to the difference between the total of the amount of tax due or determined to be due with such return and the total of the amount of tax required to be paid by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section for the preceding month.

(3) Failure to file required returns. A taxpayer required or approved to participate in the program prescribed by this section who complies with the payment requirements of subdivision (c) of this section

(including the payment of remaining liabilities described in paragraph two of such subdivision), but who fails to file any return required pursuant to article twelve-A, thirteen-A, twenty-eight or twenty-nine of this chapter, as the case may be, for the period for which such payments were timely and fully paid or paid over, shall be liable for a penalty equal to five hundred dollars.

(h) Administration. Except as otherwise provided in this section, the provisions of part IV of article twenty-eight of this chapter shall apply to the administration of and procedures with respect to the provisions of this section relating to the taxes described by subparagraph (A) of paragraph one of subdivision (b) of this section, the provisions of section eleven hundred two of this chapter relating to the administration of and procedures with respect to such section shall apply to the administration of and procedures with respect to the provisions of this section relating to the taxes described by subparagraph (B) of such paragraph one, and the provisions of article twelve-A relating to the administration of and procedures with respect to such article shall apply to the provisions of this section relating to the taxes described in subparagraph (C) of such paragraph one.

(i) Regulations. The commissioner shall have the authority to promulgate regulations in order to implement the provisions of this section.

§ 11. Certified capital companies. (a) Definitions. For the purpose of this section the following terms shall mean:

(1) "Certification date" - the date on which a certified capital company is so designated by the department for a specific certified capital company program.

(2) "Certified capital" - an investment of cash by a certified investor in a certified capital company which fully funds the purchase price of either or both its equity interest in the certified capital company or a qualified debt instrument issued by the certified capital company. Any such investment shall be subject to the provisions of article fourteen of the insurance law.

(3) "Certified capital company" - a partnership, corporation, trust or limited liability company, organized on a for-profit basis that is

located, headquartered and licensed or registered to conduct business in New York, that has as its primary business activity the investment of cash in qualified businesses and that is certified by the department as meeting the criteria set forth in subdivision (b) of this section.

(4) "Certified investor" - any insurance company that contributes certified capital.

(5) "Department" - the department of financial services; provided, however, that "department" shall mean the department of economic development with regard to any application, certification, report, submission, filing or other action required or governed by this section occurring on or after August first, two thousand eleven.

(6) "Net profits on certified investments" - the amount of money returned to the certified capital company in repayment of or exchange for the certified capital company's qualified investment or investments in the qualified business in excess of the amount of such qualified investment or investments. Such number shall aggregate all of the certified capital company's qualified investments where gains on qualified investments are netted against losses on qualified investments.

(7) "Qualified business" - an independently owned and operated business that meets all of the following conditions as of the time of the first investment in the business:

(A) It is headquartered in New York state, and its principal business operations are located in New York state, and the qualified investment it receives is used solely to support its business operations in the state, except for advertising, promotions and sales purposes. In cases where the qualified investment is made in a start-up company such capital must be used solely to establish and support its business operations in New York state, except for advertising, promotions and sales purposes.

(B) It has either (i) no more than one hundred employees, at least eighty percent of whom are employed in New York state or, (ii) no more than two hundred employees, at least eighty percent of whom are employed in this state, and during the fiscal year immediately preceding the qualified investment it had, together with its affiliates, gross revenues of no more than five million dollars, on a consolidated basis as determined in accordance with generally accepted accounting

principles, except that, with respect to certified capital company program three and certified capital company program four and certified capital company program five, in the case of a company located in an empire zone established pursuant to article eighteen-B of the general municipal law such gross revenues shall not exceed eight million dollars.

(C) It is involved in commerce for the purpose of developing and manufacturing products and systems, including but not limited to high technology products and systems such as computers, computer software, medical equipment, biotechnology, telecommunications equipment and products, processing or assembling all types of products, conducting research and development on all types of products or providing services, but excluding real estate, real estate development, insurance and businesses predominantly engaged in professional services provided by accountants, lawyers or physicians.

(D) The business was not organized by a certified capital company or an affiliate of a certified capital company, but this paragraph shall not prohibit a certified capital company from providing financial, technical or similar advice to a business before making an investment in such business.

(E) The business does not have a financial relationship, such as an ownership interest, investment interest, or compensation agreement, with a certified capital company or any affiliate of a certified capital company before the date on which a certified capital company makes its first investment in the business, but this paragraph shall not prohibit a certified capital company from providing financial, technical or similar advice to a business before making an investment in such business.

(F) For purposes of this paragraph, the term "independently owned and operated business" means (i) in the case of a corporation or limited liability company, a corporation where no more than fifty percent of the voting stock of the corporation or limited liability company is owned or controlled, directly or indirectly, by a single corporation, a single partnership or a single limited liability company, and (ii) in the case of a partnership, association, or other entity, a partnership, association or other entity where no more than fifty percent of the capital, profits or other beneficial interest in such partnership,

association or other entity is owned or controlled, directly or indirectly, by a single corporation, a single partnership or a single limited liability company; provided, however, that the term shall include, as a single "independently owned and operated business," parent and subsidiary or affiliated corporations or limited liability companies (i) that are engaged in an integrated for-profit business enterprise, and (ii) in which at least eighty percent of the voting stock or membership interests of all of the corporations or limited liability companies is owned or controlled, directly or indirectly, by a common group of shareholders or members, and no more than fifty percent of the voting stock or membership interests of all of the corporations or limited liability companies is owned or controlled, directly or indirectly, by a single corporation, single partnership, or single limited liability company that is not part of such group or parent company or affiliated corporations or limited liability companies.

(8) "Qualified debt instrument" - a debt instrument issued by a certified capital company, at par value or a premium, with an original maturity date of at least five years from date of issuance, a repayment schedule which is not faster than a level principal amortization, and interest, distribution or payment features which are not related to the profitability of the certified capital company or the performance of the certified capital company's investment portfolio.

(9) "Qualified distribution" - any distribution or payment by a certified capital company in connection with the following:

(A) Reasonable costs and expenses of such equity holders incurred by such equity holders in connection with forming, syndicating, managing and operating the certified capital company, including (i) an annual management fee in an amount that does not exceed two and one-half percent of the certified capital of the certified capital company with respect to a particular certified capital company program; (ii) the reasonable and necessary fees paid for professional services (such as legal and accounting services) related to the operation of the certified capital company; (iii) with respect to program four and any subsequent program, all payments by the certified capital company in satisfaction of its indebtedness to its certified investors, provided that no more than thirty-five percent of such certified capital company's certified capital may be used to purchase U.S. treasury securities, other

investment-grade securities, a guaranty, indemnity, bond, insurance policy or other payment undertaking, or any combination thereof; and provided further, that nothing in this provision shall be construed to limit a certified capital company from expending non-certified capital in satisfaction of such indebtedness; and (iv) with respect to program four and any subsequent program, the reasonable costs and expenses of forming, syndicating, or organizing the certified capital company, separate from the costs of insuring or defeasing the obligations of the certified capital company, provided, however, that such costs and expenses shall not exceed five percent of the certified capital company's certified capital; and

(B) Any increase or projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, of the equity owners of a certified capital company resulting from the earnings or other tax liability of the certified capital company to the extent that the increase is related to the ownership, management or operation of a certified capital company.

(10) "Qualified investment" - the investment of cash by a certified capital company in a qualified business for the purchase of any debt, equity or hybrid security, of any nature and description whatever, including a debt instrument or security which has the characteristics of debt but which provides for conversion into equity or equity participation instruments such as options or warrants, provided however, in the case of certified capital programs three, four and five, that any such debt instrument have a maturity of at least twenty-four months from the date such debt is incurred; and further provided that a certified capital company, after the investment and assuming full conversion and exercise of any equity participation instruments, shall not own more than fifty percent of the voting equity of the qualified business, except in the case of a follow-on investment where a specific exemption is granted by the department under subparagraph (D) of paragraph one of subdivision (c) of this section. Furthermore, except in the case of a follow-on investment, if a certified capital company owns more than fifteen percent of the equity in a company or has a seat on the board of directors of such company, then a certified capital company cannot invest in such company unless the following conditions are met: (i) at least one other investor who is not an affiliate of the certified

capital company participates in the same round of investment on the same terms and conditions as the certified capital company; and (ii) the certified capital company and its affiliates invest no more than fifty percent of the total investment made in that round of investment.

(11) "Early stage business" - a qualified business which is involved, at the time of investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes, or, which is less than two years old and during the fiscal year immediately preceding the qualified investment had, together with its affiliates, gross revenues of no more than two million dollars, on a consolidated basis as determined in accordance with generally accepted accounting principles.

(12) "Superintendent" - the superintendent of financial services; provided, however, that "superintendent" shall mean the commissioner of economic development with regard to any application, certification, report, submission, filing or other action required or governed by this section occurring on or after August first, two thousand eleven.

(13) "Certified capital company program" - a calendar year or years for which taxpayers may be allocated and allowed credits pursuant to this section and subdivision (k) of section fifteen hundred eleven of this chapter and delineated as a separate program by this section.

(14) "Starting date" - the date on which a certified capital company is allocated certified capital for a specific certified capital company program pursuant to subdivision (b) of this section.

(15) "Underserved area" - a county, including a county wholly within a city, in which, as of January first, two thousand, less than twenty-five percent of the qualified investments in qualified businesses were made by certified capital companies under certified capital company program one. The superintendent shall prepare a list of such counties by July first, two thousand.

(16) "Start-up business" - a qualified business which is involved, at the time of investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes, or, which is less than two years old and during the fiscal year immediately preceding the qualified investment had, together with its affiliates, gross revenues of no more than two million dollars, on a consolidated basis as

determined in accordance with generally accepted accounting principles and has fewer than twenty employees at the time of the investment; and, in addition, which has emerged within the year prior to the date of investment or is emerging from, or utilizes a technology transferred from, a university or college research facility located in New York state, a not-for-profit research facility located in New York state, or an industrial research facility located in New York state, or which is conducting research in conjunction with or in the research facilities of a university or college located in New York state, or which is located in or has emerged within the year prior to the date of investment or is emerging from an incubator facility located in New York state.

(b) Certification. (1) The superintendent shall establish by rule or regulation the procedures for making an application to become a certified capital company. The applicant shall pay a non-refundable application fee of five hundred dollars at the time of filing the application with the department.

(2) The superintendent may certify partnerships, corporations, trusts or limited liability companies, organized on a for profit basis, which submit an application to be designated as a certified capital company if such applicant is located, headquartered and licensed or registered to conduct business in New York, has as its primary business activity the investment of cash in qualified businesses and meets the other criteria set forth in this subdivision.

(3) A certified capital company's initial capitalization, at the time of seeking certification, must be five hundred thousand dollars or more.

(4) The superintendent shall review the organizational documents of each applicant for certification and the business history of the applicant, determine that the applicant's cash, marketable securities and other liquid assets are at least five hundred thousand dollars, and determine that the officers and the board of directors, general partners, trustees, managers, or members are trustworthy and are thoroughly acquainted with the requirements of this subdivision.

(5) The superintendent shall verify that at least two principals of the certified capital company or any manager of the certified capital company each have no less than five years of experience in the venture capital or a venture capital-related industry.

(6) Any offering material involving the sale of securities of the

certified capital company shall include the following statement:

"Authorizing the formation of a Certified Capital Company does not constitute the endorsement of the state of New York as to either the quality of management or the potential for earnings of such company and the state of New York is not liable for damages or losses to a Certified Investor in the company. Use of the word 'certified' in an offering does not constitute a recommendation or endorsement of the investment by the state of New York.

Investments in a prospective Certified Capital Company prior to the time such company is certified with respect to a certified capital company program are not eligible for tax credits. In the event certain statutory provisions (as specified in section 11 of the Tax Law) are violated, the state of New York may require forfeiture of unused tax credits and repayment of used tax credits."

(7) Within sixty days of application, the superintendent shall issue the certification or shall refuse the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

(8) The superintendent may certify any previously certified capital company which has remained in compliance with the requirements of this section upon the application of such company to be designated a certified capital company for a certified capital company program for which it is not so designated. Such new certification shall be considered a separate certification from any other such certification under this section and investments in and by such company shall be considered separately for purposes of subdivisions (c) and (d) of this section.

(9) The superintendent shall start accepting applications to become a certified capital company in certified capital company program two by November first, nineteen hundred ninety-nine, and shall start accepting applications to become a certified capital company in certified capital company program three by August first, two thousand, and shall begin accepting applications to become a certified capital company in certified capital company program four by the later of August first, two thousand four or not more than sixty days after the effective date of section one of part D of chapter fifty-nine of the laws of two thousand

four and shall begin accepting applications to become a certified capital company in certified capital company program five by the later of July first, two thousand five or not more than sixty days after the effective date of the chapter of the laws of two thousand five which amended this paragraph.

(10) A certified capital company may obtain a guaranty, indemnity, bond, insurance policy and/or other payment undertaking for the benefit of its certified investors from any entity; provided, however, that, in no case shall more than one certified investor of such certified capital company or affiliates of such certified investor be entitled to provide such guaranty, indemnity, bond, insurance policy and/or other payment undertaking in favor of the certified investors of the certified capital company and its affiliates in this state.

(c) Requirements for continuance of certification. (1) To continue to be certified with respect to a particular certified capital company program, a certified capital company must make qualified investments according to the following schedule:

(A) Within two years after the starting date of a specific certified capital company program of a certified capital company, at least twenty-five percent of its certified capital allocable to such certified capital company program must be placed in qualified investments.

(B) Within three years after the starting date of a specific certified capital company program of a certified capital company, at least forty percent of its certified capital allocable to such certified capital company program must be placed in qualified investments.

(C) Within four years after the starting date of a specific certified capital company program of a certified capital company, at least fifty percent of its certified capital allocable to such certified capital company program must be placed in qualified investments, at least fifty percent of which must have been placed in early stage businesses, except that in the case of program four and any subsequent program, at least twenty-five percent of which must have been placed in early stage businesses and an additional twenty-five percent of which must have been placed in start-up businesses, and except that in the case of qualified investments made in qualified businesses located in empire zones established pursuant to article eighteen-B of the general municipal law under the provisions of certified capital company program three, program

four and program five from allocations of certified capital made specifically for such targeted investments in such zones, the requirement for qualified investments in early stage and start-up businesses shall not apply.

(D) A certified capital company, at least fifteen working days prior to making a proposed investment in a specific business, shall certify in writing to the superintendent that (i) the business in which it proposes to invest meets the definition of a qualified business as set forth in subdivision (a) of this section or, in the case of a follow-on investment, that such business continues to meet the requirements set forth in subparagraphs (A) and (C) of paragraph seven of subdivision (a) of this section and, in either case, an explanation of its determination that the business meets such requirements, and (ii) with respect to certified capital company program three, program four and program five, whether or not such business is located in an empire zone established pursuant to article eighteen-B of the general municipal law or in an underserved area outside an empire zone. The certification to the superintendent shall include a sworn statement from the business in which the certified capital company proposes to invest, which statement shall evidence the intention of the business to maintain its headquarters in New York and conduct its primary business operations in the state of New York after its receipt of the investment by the certified capital company. If the superintendent determines that the business does not meet the definition of a qualified business, or, in the case of a follow-on investment, that such business does not meet the requirements set forth in subparagraphs (A) and (C) of paragraph seven of subdivision (a) of this section, then it shall, within the fifteen working day period prior to the making of the proposed investment, notify the certified capital company of its determination and provide an explanation thereof, provided, however, that the department may, upon written request of a certified capital company and at the discretion of the department, grant, in writing, an exemption to the percentage limitations of paragraph ten of subdivision (a) of this section.

(E) All certified capital not placed in qualified investments by the certified capital company may be held or invested in such manner as the certified capital company, in its discretion, deems appropriate. The proceeds of all certified capital returned to a certified capital

company after being originally placed in qualified investments may be placed again in qualified investments and shall count toward any requirement in this subdivision with respect to placing certified capital in qualified investments.

(F) If within ten years after the starting date of certified capital company program four or program five, and within twelve years after the starting date of certified capital company programs one, two, and three, one hundred percent of the certified capital allocable to a certified capital company participating in such program has not been placed in qualified investments, the specific certified capital company shall no longer be permitted to receive management fees; provided that such restriction shall not apply (i) with respect to certified capital company programs one, two, and three, to any certified capital company that has not, prior to October thirty-first, two thousand four, received, as opposed to accrued, any management fees, or (ii) with respect to any certified capital company program, to a certified capital company in which at least fifty percent of the voting stock, capital, membership interests, or other beneficial ownership interests, as the case may be, are owned by an entity that is managed, directly or indirectly, by a non-profit corporation.

(2) Any business which is classified as a qualified business at the time of the first investment in said business by a certified capital company shall remain classified as a qualified business and may receive follow-on investments from any certified capital company, and such follow-on investments shall be qualified investments even though such business may not meet the definition of a qualified business at the time of such follow-on investments, provided, however, that such business continues to meet the requirements set forth in subparagraphs (A) and (C) of paragraph seven of subdivision (a) of this section, and such business reaffirms its intention to maintain its headquarters in New York and conduct its primary business operations in the state of New York as required in subparagraph (D) of paragraph one of this subdivision.

(3) No qualified investment may be made by a certified capital company to the extent such investment would cause the company's total qualified investment outstanding with respect to the qualified business receiving such investment to exceed fifteen percent of the total certified capital

of the certified capital company at the time of such investment.

(4) Documents and other materials submitted by certified capital companies or by businesses for purposes of the continuance of certification shall not be public records if such records are determined by the superintendent to be trade or business secrets and shall be maintained in a confidential manner by the superintendent.

(5) The aggregate cumulative amount of all qualified investments made by the certified capital company for a certified capital company program from its starting date for such program will be considered in the calculation of the percentage requirements under subparagraphs (A), (B) and (C) of paragraph one of this subdivision, provided, however, that any amounts received by a certified capital company from a qualified business as (i) commitment fees, closing fees, or other similar fees (excluding reimbursement of out-of-pocket expenses, including legal fees and accounting fees) in excess of one percent of the certified capital company's investment in the qualified business or (ii) license fees, royalties, or similar charges shall not be considered in any of the percentage calculations under this section.

(6) Each certified capital company shall report the following to the superintendent:

(A) As soon as practicable after the receipt of certified capital or an irrevocable funding commitment subject only to the receipt of an allocation pursuant to subdivision (h) of this section, (i) the name of each certified investor from which the certified capital was received, including such certified investor's insurance tax identification number; (ii) the amount of each certified investor's investment of certified capital; and (iii) the date on which the certified capital was received. Provided, however, that requests for allocation of tax credits with respect to certified capital company program two by certified capital companies on behalf of their certified investors which are received by the superintendent on or before March first, two thousand shall be treated as having been received on March first, two thousand for tax credits to be utilized in two thousand one, and if satisfactory, shall be given equal priority for allocation, and provided, however, that requests for allocation of tax credits with respect to certified capital company program three by certified capital companies on behalf of their certified investors which are received by the superintendent on or

before December first, two thousand shall be treated as having been received on December first, two thousand for tax credits to be utilized in two thousand two, and if satisfactory, shall be given equal priority for allocation, and provided, however, that requests for allocation of tax credits with respect to certified capital company program four by certified capital companies on behalf of their certified investors which are received by the superintendent on or before December first, two thousand four shall be treated as having been received on December first, two thousand four for tax credits to be utilized in two thousand six, and if satisfactory, shall be given equal priority for allocation, and provided, however, that requests for allocation of tax credits with respect to certified capital company program five by certified capital companies on behalf of their certified investors which are received by the superintendent on or before the later of (i) November first, two thousand five and (ii) the one hundred twentieth day after the date on which the superintendent began accepting applications for certification in connection with certified capital company program five pursuant to paragraph nine of subdivision (b) of this section shall be treated as having been received on such later date for tax credits to be utilized in two thousand seven, and if satisfactory, shall be given equal priority for allocation.

(B) On an annual basis, on or before January thirty-first of each year, (i) the amount of the certified capital company's certified capital at the end of the immediately preceding year; (ii) whether or not the certified capital company has invested more than fifteen percent of its total certified capital in any one business; (iii) all qualified investments that the certified capital company made during the previous calendar year, including the number of employees of each qualified business in which it has made investments at the time of such investment and as of December first of the preceding calendar year. For any qualified business where the certified capital company no longer has an investment, the certified capital company shall provide employment figures for such company as of the last day before the investment was terminated. Such report shall provide a separate accounting by each certified capital company program; and (iv) all qualified investments made in empire zones and underserved areas outside such empire zones as required under certified capital company program three, certified

capital company program four and certified capital company program five.

(C) Each certified capital company shall provide to the superintendent annual audited financial statements, which shall include the opinion of an independent certified public accountant, within ninety days of the close of its fiscal year. The audit shall address whether the funds received by the certified capital company have been invested as required under subparagraphs (A), (B) and (C) of paragraph one of this subdivision. Upon receiving notification and documentation by a certified capital company that it has satisfied the requirements of subparagraph (C) of paragraph one of this subdivision that it has invested fifty percent of its certified capital, the department shall have sixty days to notify such certified capital company that it has or has not met such requirement, with a reason for such determination if it has not, in the judgment of the department, met such requirement. If the department does not provide such notification within sixty days, the certified capital company shall then be deemed to have met such requirement.

(D) On or before April first of each year, each certified capital company shall pay an annual, non-refundable certification fee of five hundred dollars to the superintendent; provided that no such fee shall be required within six months of the initial certification date of a certified capital company.

(E)(1) Within thirty days of the decision on an application for certification pursuant to subdivision (b) of this section, the superintendent shall submit a copy of such application and the related decision to the department of taxation and finance. The superintendent shall submit a copy of all filings of certifications pursuant to subparagraph (D) of paragraph one of this subdivision and any determination made thereon within fifteen days of such filing.

(2) The superintendent shall annually, by March first, submit to the department of taxation and finance a list of persons who may claim the tax credit for the previous taxable year and any other information necessary to assist the department of taxation and finance to determine eligibility for such tax credit.

(d) Distributions. (1) A certified capital company may make qualified distributions at any time. In order for a certified capital company to make a distribution other than a qualified distribution from a certified

capital company program, to its equity holders, either (A) the aggregate cumulative amount of all qualified investments for such program must equal or exceed one hundred percent of its certified capital allocable to such certified capital company program, or (B) it must have received written authorization to make such distribution from the superintendent. In no event, however, shall any such distribution to its equity holders, other than a qualified distribution, be made by a certified capital company from a certified capital company program unless an amount equal cumulatively to at least ninety percent of its certified capital of such program is invested in companies that conduct their principal business operations in New York state.

(2) In the event that a business in which a qualified investment is made relocates its principal business operations to another state during such investment, or within three months after the termination of such investment, the cumulative amount of qualified investment shall be reduced by the amount of such qualified investment, for the purposes of this subdivision only, unless (A) the certified capital company invests an amount at least equal to the investment of certified capital in the relocated business in a qualified business located in New York state within six months of the relocation or (B) unless the business demonstrates that it has returned its principal business operations to New York state within three months of such relocation. A business shall be deemed to have relocated its principal business operations outside New York state if the primary workplace of more than fifty percent of the employees of such business within the state is relocated to another state.

(3) In the event that a business in which a qualified investment is made under certified capital company program three, certified capital company program four or certified capital company program five, relocates its principal business operation within the earlier of four years after the date of such qualified investment or three months after the termination of such investment, whereby the requirements of paragraph three of subdivision (h) of this section to make qualified investments in qualified businesses located in empire zones established pursuant to article eighteen-B of the general municipal law or in underserved areas outside such empire zones no longer are satisfied, the cumulative amount of qualified investment shall be reduced by the amount

of such qualified investment, for the purposes of this subdivision only, unless (A) the certified capital company invests an amount at least equal to the investment of certified capital in the relocated business in a qualified business located in either an empire zone or in an underserved area outside an empire zone so that the requirements of paragraph three of subdivision (h) of this section are again satisfied within six months of such relocation, unless the certified capital company certifies to the superintendent that a good faith effort was made to make additional qualifying investments under the requirements of paragraph three of subdivision (h) of this section, or (B) the business demonstrates that it has returned its principal business operation to New York state in either an empire zone or in an underserved area outside an empire zone within three months of such relocation, or (C) the business demonstrates that it had a valid business purpose for relocating its principal business operation. A business shall be deemed to have relocated its principal business operations outside of an empire zone or an underserved area outside an empire zone if the primary workplace of more than fifty percent of the employees of such business within an empire zone or an underserved area outside an empire zone is relocated to an area outside the state or outside an empire zone or an underserved area outside an empire zone.

(4) Payments to debt holders of a certified capital company may be made without restriction with respect to repayments of principal and interest on indebtedness owed to them by a certified capital company, including indebtedness of the certified capital company on which certified investors earned tax credits. A debt holder that is also a certified investor or equity holder of a certified capital company may receive payments with respect to such debt without any restriction whatsoever.

(5) A certified capital company that receives certified capital investments under program four and any subsequent program shall pay to the department for deposit in the general fund an amount equal to thirty percent of the net profits on qualified investments. A certified capital company shall make all payments required under this paragraph concurrently with and pro rata to distributions of profits and gains to its equity owners; however, nothing contained in this paragraph shall be construed to affect qualified distributions.

(6) The amount of any payment required under paragraph five of this subdivision shall be reduced to fifteen percent of such net profits on qualified investments if, at the time of such net profits distribution, such certified capital company irrevocably commits to both: (A) re-invest the remaining fifteen percent of such net profits not being paid to the general fund under paragraph five of this subdivision into qualified businesses, and (B) invest an additional amount equal to at least fifteen percent of such net profits distribution into qualified businesses which additional amount shall come from a separate pool of venture capital that is controlled by the certified capital company but that does not contain certified capital. In making investments from funds established under this paragraph, the certified capital company shall follow the requirements set forth in subparagraph (D) of paragraph one of subdivision (c) of this section pertaining to obtaining approval of the investment being in a qualified business, except that requirements pertaining to empire zones and underserved areas requirements shall not apply. Once qualified investments in qualified businesses have been made pursuant to this paragraph equal to thirty percent of the net profits on qualified investments, then the requirements under this subdivision shall have been satisfied and the proceeds from such qualified businesses may be distributed without restriction.

(e) Decertification. (1) The superintendent shall conduct an annual review of each certified capital company to determine if the certified capital company is abiding by the requirements of certification, to advise the certified capital company as to the eligibility status of its qualified investments, and to ensure that no investment has been made in violation of this subdivision. The cost of the annual review shall be paid by each certified capital company according to a reasonable fee schedule adopted by the superintendent.

(2) Any material violation of subdivision (c) of this section with respect to a particular certified capital company program shall be grounds for decertification of the certified capital company with respect to such program. If the superintendent determines that a certified capital company is not in compliance with the requirements of subdivision (c) of this section with respect to a particular certified capital company program, it shall, by written notice, inform the

officers of the certified capital company that the certified capital company will be subject to decertification with respect to such program in one hundred twenty days from the date of mailing of the notice, unless the deficiencies are corrected and the certified capital company is again in compliance with all requirements for certification.

(3) At the end of the one hundred twenty day grace period, if the certified capital company is still not in compliance with subdivision (c) of this section with respect to a particular certified capital company program, the superintendent shall send a notice of decertification to the certified capital company with respect to such program and to all other appropriate state agencies.

(4) Notwithstanding the provisions of paragraphs two and three of this subdivision, if a certified capital company in certified capital company programs three, four and five fails to satisfy the requirement in subparagraph (B) of paragraph one of subdivision (c) of this section because it has been unable to make a sufficient amount of qualified investments in qualified businesses located either in empire zones established pursuant to article eighteen-B of the general municipal law or in underserved areas outside such empire zones, such certified capital company shall not be subject to decertification at that time. However, if such certified capital company fails to satisfy the requirement in subparagraph (C) of paragraph one of subdivision (c) of this section because it has been unable to make a sufficient amount of qualified investments in qualified businesses located either in such empire zones or in underserved areas outside such empire zones, but certifies to the superintendent that it had made a good faith effort to make such investments, such certified capital company shall be allowed two additional years to satisfy the requirement in such subparagraph (C). If, after the conclusion of such two year period, the certified capital company still has not been able to satisfy the requirement to make such investments, and such certified capital company certifies to the superintendent that it had made a good faith effort to make such investments, the requirement in paragraphs three, four and five of subdivision (h) of this section to make qualified investments in qualified businesses located in empire zones or in underserved areas shall be waived. Such certified capital company shall then be allowed one additional year to satisfy the requirement in such subparagraph (C),

and if, at the conclusion of that additional one year period, such requirement is still not satisfied, such certified capital company shall be subject to decertification and the provisions of paragraphs two and three of this subdivision shall apply.

(5) Once a certified capital company has invested an amount cumulatively equal to one hundred percent of its certified capital with respect to a particular certified capital company program in qualified investments and has met all other requirements under this subdivision, the certified capital company shall no longer be subject to regulation by the superintendent and shall no longer be subject to the requirements of subdivision (c) of this section with respect to such program. Upon receiving documented certification by a certified capital company that it has invested an amount equal to one hundred percent of its certified capital, the department shall have sixty days to notify such certified capital company that it has or has not met such requirement with a reason for such determination if it has not, in the judgment of the department, met such requirement. If the department does not provide such notification within sixty days, the certified capital company shall then be deemed to have met such requirement.

(6) The superintendent shall send written notice of such decertification to the address of each certified investor whose tax credit has been subject to recapture or forfeiture, using the address shown on the last filing submitted to the superintendent.

(f) Revocation of certification. The superintendent may revoke the certification of a certified capital company, or, at the discretion of the superintendent, the certification of a certified capital company with respect to a particular certified capital company program only, if any material representation to the superintendent in connection with the application process proves to have been falsely made or if the application materially violates any requirement established by the superintendent pursuant to this subdivision. In addition, the superintendent may revoke the certification of a certified capital company if such certified capital company (i) falsely certified, pursuant to paragraph three of subdivision (d) of this section that a good faith effort was made to make additional qualifying investments under the requirements of paragraph three of subdivision (h) of this section, or (ii) falsely certified, pursuant to paragraph four of

subdivision (e) of this section, that it had made a good faith effort to make a sufficient amount of qualifying investments in qualifying businesses located in empire zones established pursuant to article eighteen-B of the general municipal law or in underserved areas outside such empire zones.

(g) Registration requirements. All investments for which tax credits are allowable under the provisions of subdivision (k) of section fifteen hundred eleven of this chapter shall satisfy the conditions of being registered or specifically exempt from registration by provisions or regulations under sections three hundred fifty-nine-e through three hundred fifty-nine-ff of the general business law.

(h) Maximum permitted credits. (1) Certified capital company program one. The aggregate amount of certified capital for which taxpayers may be allocated and allowed tax credits pursuant to this paragraph and subdivision (k) of section fifteen hundred eleven of this chapter may not exceed fifty million dollars for calendar year nineteen hundred ninety-nine, which certified capital may be invested in certified capital companies beginning in calendar year nineteen hundred ninety-eight. In calendar year two thousand or thereafter, tax credits may be allowed pursuant to this paragraph and such subdivision (k) for an additional fifty million dollars of certified capital, which certified capital may be invested in certified capital companies beginning in calendar year nineteen hundred ninety-nine, if not allocated to calendar year nineteen hundred ninety-eight in accordance with this paragraph. Therefore, the total amount of certified capital for which tax credits may be allowed pursuant to this paragraph and such subdivision (k) shall be one hundred million dollars.

During any calendar year in which the limitation described in this paragraph will limit the amount of certified capital, certified capital will be allocated in order of priority based upon the date of filing of information described in subparagraph (A) of paragraph six of subdivision (c) of this section. Certified capital limited in any calendar year by the application of the provisions of this paragraph shall be allowed and allocated in the immediately succeeding calendar year in order of priority set forth in this paragraph. The superintendent shall advise any certified capital company in writing

within fifteen days after receiving such filing, whether the limitations of this paragraph then in effect will be applicable with respect to the investments and credits described in such filing with the superintendent.

Certified capital may be raised by each certified capital company with respect to certified capital company program one at any time subsequent to its certification date, and credits shall be allocated to and vested in certified investors at the time of each such investment as provided in this paragraph, although such credits shall not be first allowed or incurred for state tax purposes, until, at the earliest, tax years beginning in nineteen hundred ninety-nine with respect to the first fifty million dollars of credits and tax years beginning in two thousand with respect to the next such fifty million dollars of credits.

(2) Certified capital company program two. The aggregate amount of certified capital for which taxpayers may be allocated and allowed tax credits pursuant to this paragraph and subdivision (k) of section fifteen hundred eleven of this chapter may not exceed thirty million dollars for calendar year two thousand one, which certified capital may be invested in certified capital companies beginning in calendar year nineteen hundred ninety-nine.

During any calendar year in which the limitation described in this paragraph will limit the amount of certified capital, certified capital will be allocated in order of priority based upon the date of filing of information described in subparagraph (A) of paragraph six of subdivision (c) of this section. The superintendent shall advise any certified capital company in writing, within fifteen days after receiving such filing, whether the limitations of this paragraph then in effect will be applicable with respect to the investments and credits described in such filing with the superintendent.

Certified capital may be raised by each certified capital company with respect to certified capital company program two at any time subsequent to its certification date, and credits shall be allocated to and vested in certified investors at the time of each such investment as provided in this paragraph, although such credits shall not be first allowed or

incurred for state tax purposes, until, at the earliest, tax years beginning in two thousand one.

(3) Certified capital company program three. The aggregate amount of certified capital for which taxpayers may be allocated and allowed tax credits pursuant to this paragraph and subdivision (k) of section fifteen hundred eleven of this chapter may not exceed one hundred fifty million dollars for calendar year two thousand two, which certified capital may be invested in certified capital companies beginning in calendar year two thousand.

During any calendar year in which the limitation described in this paragraph will limit the amount of certified capital, certified capital will be allocated in order of priority based upon the date of filing of information described in subparagraph (A) of paragraph six of subdivision (c) of this section. The superintendent shall advise any certified capital company in writing, within fifteen days after receiving such filing, whether the limitations of this paragraph then in effect will be applicable with respect to the investments and credits described in such filing with the superintendent.

Certified capital may be raised by each certified capital company with respect to certified capital company program three at any time subsequent to its certification date, and credits shall be allocated to and vested in certified investors at the time of each such investment as provided in this paragraph, although such credits shall not be first allowed or incurred for state tax purposes, until, at the earliest, tax years beginning in two thousand two. One-third of the certified capital raised by each certified capital company with respect to certified capital company program three shall be used to make qualified investments in qualified businesses located in empire zones established pursuant to article eighteen-B of the general municipal law, and one-third of such certified capital shall be used to make qualified investments in qualified businesses located in underserved areas outside such empire zones.

(4) Certified capital company program four. The aggregate amount of certified capital for which taxpayers may be allocated and allowed tax credits pursuant to this paragraph and subdivision (k) of section

fifteen hundred eleven of this chapter may not exceed sixty million dollars for calendar year two thousand six, which certified capital may be invested in certified capital companies beginning in calendar year two thousand four.

During any calendar year in which the limitation described in this paragraph will limit the amount of certified capital, certified capital will be allocated in order of priority based upon the date of filing of information described in subparagraph (A) of paragraph six of subdivision (c) of this section. The superintendent shall advise any certified capital company in writing, within fifteen days after receiving such filing, whether the limitations of this paragraph then in effect will be applicable with respect to the investments and credits described in such filing with the superintendent.

Certified capital may be raised by each certified capital company with respect to certified capital company program four at any time subsequent to its certification date, and credits shall be allocated to and vested in certified investors at the time of each such investment as provided in this paragraph, although such credits shall not be first allowed or incurred for state tax purposes, until, at the earliest, tax years beginning in two thousand six. One-third of the certified capital raised by each certified capital company with respect to certified capital company program four shall be used to make qualified investments in qualified businesses located in empire zones established pursuant to article eighteen-B of the general municipal law, and one-third of such certified capital shall be used to make qualified investments in qualified businesses located in underserved areas outside such empire zones, provided, however, that in the case of an investment made by a certified capital company in an empire zone located in an underserved area, the certified capital company making such an investment may choose to designate such investment as an investment in an underserved area but not as an investment in an empire zone for the purpose of meeting the requirements of this paragraph. Fifty percent of the total amount of capital invested by a certified capital company at the time of one hundred percent investment of funds shall be invested in qualified businesses that are involved in commerce for the primary purpose of

developing and manufacturing products and systems covered by the activities set forth in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law and have a ratio of research and development expenditures to net sales which equals or exceeds six percent during the fiscal year immediately preceding the qualified investment.

(5) Certified capital company program five. The aggregate amount of certified capital for which taxpayers may be allocated and allowed tax credits pursuant to this paragraph and subdivision (k) of section fifteen hundred eleven of this chapter may not exceed sixty million dollars for calendar year two thousand seven, which certified capital may be invested in certified capital companies beginning in calendar year two thousand five.

During any calendar year in which the limitation described in this paragraph will limit the amount of certified capital, certified capital will be allocated in order of priority based upon the date of filing of information described in subparagraph (A) of paragraph six of subdivision (c) of this section. The superintendent shall advise any certified capital company in writing, within fifteen days after receiving such filing, whether the limitations of this paragraph then in effect will be applicable with respect to the investments and credits described in such filing with the superintendent.

Certified capital may be raised by each certified capital company with respect to certified capital company program five at any time subsequent to its certification date, and credits shall be allocated to and vested in certified investors at the time of each such investment as provided in this paragraph, although such credits shall not be first allowed or incurred for state tax purposes, until, at the earliest, tax years beginning in two thousand seven. One-third of the certified capital raised by each certified capital company with respect to certified capital company program five shall be used to make qualified investments in qualified businesses located in empire zones established pursuant to article eighteen-B of the general municipal law, and one-third of such certified capital shall be used to make qualified investments in qualified businesses located in underserved areas outside such empire

zones, provided, however, that in the case of an investment made by a certified capital company in an empire zone located in an underserved area, the certified capital company making such an investment may chose to designate such investment as an investment in an underserved area but not as an investment in an empire zone for the purpose of meeting the requirements of this paragraph. Fifty percent of the total amount of capital invested by a certified capital company at the time of one hundred percent investment of funds shall be invested in qualified businesses that are involved in commerce for the primary purpose of developing and manufacturing products and systems covered by the activities set forth in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law and have a ratio of research and development expenditures to net sales which equals or exceeds six percent during the fiscal year immediately preceding the qualified investment.

(i) Maximum certified capital. The maximum amount of certified capital per certified capital company program invested in one or more certified capital companies allowed in any one year to any one certified investor shall not exceed ten million dollars for certified capital company programs one and three, and eight million dollars for certified capital company programs two, four and five for such year, provided, however, that if the aggregate amount of certified capital for such year, as set forth in subdivision (h) of this section, has not been reached sixty days prior to the end of the year to which such aggregate amount applies, the provisions of this subdivision shall cease to apply for the remainder of such year. In addition, the aggregate amount of tax credits allowed in any taxable year to any affiliated group of taxpayers in relation to certified capital may not exceed such maximum amount, whether or not such taxpayers file a combined return pursuant to subdivision (f) of section fifteen hundred fifteen of this chapter. For purposes of the preceding sentence, the term "affiliated group" shall have the same meaning as described in section 1504 of the internal revenue code, except that the references to "at least eighty percent" in such section 1504 shall be read as "more than fifty percent".

(k) Rules and regulations. The superintendent, in consultation with the department of taxation and finance, shall prescribe such rules and regulations as he or she shall deem necessary in order to implement the

provisions of this section within one hundred twenty days of the effective date of this section.

(l) For the purposes of this section, the term "empire zone" shall also include, in relation to investments made by a certified capital company in which at least fifty percent of the voting stock, capital, and membership interests, as the case may be, are owned by an entity that is managed directly or indirectly, by a non-profit corporation, the liberty zone as defined in section one of part AA of chapter three hundred eighty-three of the laws of two thousand one, the resurgence zone as defined in section one of part A of chapter three hundred eighty-three of the laws of two thousand one and a federal empowerment zone designated pursuant to section 1391 of the internal revenue code.

§ 12. Internet; advertising, vendor status, nexus. (a) For purposes of subdivision (b) of this section, the term "person" shall mean a corporation, joint stock company or association, insurance corporation, or banking corporation, as such terms are defined in section one hundred eighty-three, one hundred eighty-four, or one hundred eighty-six, or in article nine-A or thirty-three of this chapter, imposing tax on such entities.

(b) No person shall be subject to the taxes imposed under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six, or article nine-A or thirty-three of this chapter, solely by reason of (1) having its advertising stored on a server or other computer equipment located in this state (other than a server or other computer equipment owned or leased by such person), or (2) having its advertising disseminated or displayed on the Internet by an individual or entity subject to tax under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six, or article nine-A, twenty-two or thirty-three of this chapter.

(c) A person, as such term is defined in subdivision (a) of section eleven hundred one of this chapter, shall not be deemed to be a vendor, for purposes of article twenty-eight of this chapter, solely by reason of (1) having its advertising stored on a server or other computer equipment located in this state (other than a server or other computer equipment owned or leased by such person), or (2) having its advertising

disseminated or displayed on the Internet by an individual or entity subject to tax under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six, or article nine-A, twenty-two or thirty-three of this chapter.

(d)(i) Except as provided in clause (B) of subparagraph (ii) of paragraph eight of subdivision (b) of section eleven hundred one of this chapter, a person selling telecommunication services or an Internet access service shall not be deemed to be a vendor, for purposes of article twenty-eight or twenty-nine of this chapter, of tangible personal property or services sold by the purchaser of such telecommunication services or Internet access service solely because such purchaser uses such telecommunication services or Internet access service as a means to sell such tangible personal property or services.

(ii) For purposes of this subdivision, the term "person" shall refer to any person within the meaning prescribed in either paragraph (c) of subdivision one of section one hundred eighty-six-e of this chapter or subdivision (a) of section eleven hundred one of this chapter, the term "telecommunication services" shall have the meaning prescribed in paragraph (g) of subdivision one of section one hundred eighty-six-e of this chapter, and the term "Internet access service" shall have the meaning prescribed in subdivision (v) of section eleven hundred fifteen of this chapter.

§ 13. (a) Exemption from taxation for victims or targets of Nazi persecution. Notwithstanding any provision of law to the contrary, amounts received (including accumulated interest) by victims or targets of Nazi persecution from an eligible settlement fund, or from an eligible grantor trust established for the benefit of such victims or targets as set forth in this section, whether or not includable in income for federal income tax purposes, shall be exempt from all state and local taxes imposed on or measured by income. Provided however, that this exemption shall not apply to amounts received from assets acquired with such assets or with the proceeds from the sale of such assets. For the purposes of this section, "victims or targets of Nazi persecution" means any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group,

organization, or other entity persecuted or targeted for persecution by the Nazi Regime because of race, religion, ethnicity, sexual orientation, national origin, or physical or mental disability or handicap, or the heirs, successors, administrators, executors, affiliates, or assignees of such victims or targets, or any other claimant receiving funds from an eligible settlement fund, or from an eligible grantor trust established for the benefit of such victims or targets. An eligible settlement fund is an entity that is treated for federal income tax purposes as a designated or qualified settlement fund, as such term is defined in section 468B of the internal revenue code and the regulations thereunder, which is established for the principal purpose of resolving and satisfying claims arising from or in connection with any act or omission in any way relating to the Holocaust, World War II and its prelude and aftermath, victims or targets of Nazi persecution, transactions with or actions of the Nazi Regime, or treatment of refugees fleeing Nazi persecution by or in the Swiss Confederation. An eligible grantor trust is a grantor trust which is established for the principal purpose of resolving and satisfying such claims.

(b) Exemption from taxation for qualified settlement funds established for the benefit of victims or targets of Nazi persecution by or in the Swiss Confederation. Notwithstanding any other provision of law to the contrary, an entity that is treated for federal income tax purposes as a designated or qualified settlement fund, as such term is defined in section 468B of the internal revenue code and the regulations thereunder, or a grantor trust, either of which is established for the principal purpose of resolving and satisfying claims arising from or in connection with any act or omission in any way relating to the Holocaust, World War II and its prelude and aftermath, victims or targets of Nazi persecution, transactions with or actions of the Nazi Regime, treatment of refugees fleeing Nazi persecution, by or in the Swiss Confederation, shall be exempt from all taxes imposed on or measured by income, the commercial rent tax imposed by the city of New York and all sales and use taxes whether imposed by the State or any local jurisdiction or municipality.

§ 14. Empire zones program. (a) Qualified empire zone enterprise. A business enterprise which is certified under article eighteen-B of the general municipal law and meets the employment test shall be a "qualified empire zone enterprise":

(1) except as provided in paragraphs one-a and one-b of this subdivision, for purposes of articles nine-A, twenty-two and thirty-three of this chapter, for each of the taxable years within the "business tax benefit period," which period shall consist of (A) in the case of a business enterprise with a test date occurring on or before December thirty-first, two thousand one, the first fifteen taxable years beginning on or after January first, two thousand one, (B) in the case of a business enterprise with a test date occurring on or after January first, two thousand two, but prior to April first, two thousand five, the fifteen taxable years next following the business enterprise's test year, and (C) in the case of a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand five, the ten taxable years starting with the taxable year in which the business enterprise's first date of certification under article eighteen-B of the general municipal law occurs, but only with respect to each of such business tax benefit period years for which the employment test is met,

(1-a) With respect to a business enterprise approved by the commissioner of economic development as the owner of a qualified investment project pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law, the business tax benefit period shall mean the ten taxable years starting with the taxable year in which the business enterprise's benefit period commencement date occurs, but only with respect to each of such business tax benefit period years for which the employment test is met, as the term "benefit period commencement date" is defined in this paragraph. The term "benefit period commencement date" shall mean either (i) the date of certification pursuant to article eighteen-B of the general municipal law of the business enterprise at the location of the qualified investment project or (ii) the date when property constituting a qualified investment project is first placed in service. The benefit period commencement date shall be determined by an election made by the business enterprise taxable year which includes the date of

certification of the business enterprise at the location of the qualified investment project pursuant to article eighteen-B of the general municipal law,. In the event no such election is made by the business enterprise, the business tax benefit period shall be deemed to commence in the taxable year in which the business enterprise is certified at the location of the qualified investment project pursuant to article eighteen-B of the general municipal law. The business tax benefit period allowed under this paragraph shall be in addition to the business tax benefit period allowed pursuant to paragraph one of this subdivision.

(1-b) With respect to a business enterprise approved by the commissioner of economic development as the owner of a significant capital investment project pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law, the business tax benefit period shall be increased to include the ten taxable years starting with the taxable year in which property comprising the significant capital investment project is first placed in service, provided that such property is placed in service during the business enterprise's business tax benefit period under paragraph one-a of this subdivision. The business tax benefit period set forth in paragraph one-a of this subdivision and any additional periods added to such business tax benefit period pursuant to this paragraph shall constitute one continuous business tax benefit period. During such entire business tax benefit period, the business enterprise shall be allowed to claim the tax credits provided pursuant to sections fifteen and sixteen of this article with respect to such qualified investment project and such significant capital investment project, provided the employment test is met and the requirements of such credits are satisfied for each of those taxable years, and provided further that, the benefit period factor as set forth in subdivision (c) of section fifteen of this article shall be 1.0 during such entire business tax benefit period.

(2) for purposes of articles twenty-eight and twenty-nine of this chapter, during the "sales and use tax benefit period." Such period shall consist of one hundred twenty consecutive months beginning on the later of (A) March first, two thousand one, or (B) with regard to business enterprises certified pursuant to article eighteen-B of the general municipal law prior to April first, two thousand nine, the first

day of the month next following the date of issuance of a qualified empire zone enterprise certification by the commissioner under subdivision (h) of this section, or (C) with regard to business enterprises certified pursuant to such article eighteen-B on or after April first, two thousand nine, the first day of the month next following the date of certification under article eighteen-B as an empire zone business. Provided however, such period shall not include any month falling within a taxable year immediately preceded by a taxable year with respect to which the business enterprise did not meet the employment test.

(b) Employment test.

(1) General. In the case of a business enterprise which is first certified under article eighteen-B of the general municipal law before April first, two thousand five, the employment test shall be met with respect to a taxable year if the business enterprise's employment number in the empire zones for such taxable year equals or exceeds its employment number in such zones for the base period, and its employment number in the state outside of such zones for such taxable year equals or exceeds its employment number in the state outside of such zones for the base period. For entities first certified between August first, two thousand two and March thirty-first, two thousand five, if the base period is zero years and the enterprise has an employment number in such zone of greater than zero with respect to a taxable year, then the employment test will be met only if the enterprise qualifies as a new business under subdivision (j) of this section. For entities first certified prior to August first, two thousand two, if the entity had a base period of zero years or zero employment in the base period, then the employment test will be met only if the enterprise qualifies as a new business under subdivision (j) of this section.

(2) Change in zone boundaries or newly designated zones. Provided, however, where there has been one or more revisions of the boundaries of an empire zone that resulted in the inclusion of the business enterprise within such zone, the employment test shall be determined with respect to a taxable year as if the boundaries of the revised zone on the last day of the taxable year existed during the base period and test year and as if the enterprise had been located in the revised zone during its base period and test year. In addition, where an area has been newly

designated as an empire zone, the employment test shall be determined with respect to a taxable year as if such newly designated zone existed during the base period and test year and as if the enterprise had been located in the newly designated zone during its base period and test year.

(3) Relocation from a business incubator facility. Where a business enterprise relocates to an empire zone from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space or business support services or both space and business support services to newly established enterprises, the employment test shall be determined with respect to a taxable year as if such business enterprise was located in the empire zone during the base period.

(4) In the case of a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand five, and notwithstanding any other provision to the contrary, in the case of a business enterprise which was first certified between August first, two thousand two and March thirty-first, two thousand five that conducts its operations on real property that it owns or leases that is both located within an empire zone and that is subject to a brownfield site cleanup agreement executed prior to January first, two thousand six in accordance with section 27-1409 of the environmental conservation law, the employment test shall be met with respect to a taxable year if the business enterprise's employment number in the state and the empire zones for such taxable year exceeds its employment number in the state and the empire zones, respectively, for the base period. If the base period is zero years or the base period employment is zero and the enterprise has an employment number in such zone of greater than zero with respect to a taxable year, then the employment test will be met only if the enterprise qualifies as a new business under subdivision (j) of this section.

(5) For purposes of the sales and use tax benefit period, in the case of a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand five, and is so certified during its first taxable year, the employment test shall be met with respect to such first taxable year in any month in which its employment number exceeds zero.

(c) Base period. (1) Except as provided in paragraphs two and three of this subdivision, in the case of a business enterprise which is first certified under article eighteen-B of the general municipal law before April first, two thousand five, the term "base period" means the five taxable years immediately preceding the test year. If the business enterprise has fewer than five such years, then the term "base period" means such smaller set of years.

(2) In the case of a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand five, the term "base period" means the four taxable years immediately preceding the taxable year in which the business enterprise was first certified under article eighteen-B of the general municipal law. If the business enterprise has fewer than four such years, then the term "base period" means such smaller set of years.

(3) For purposes of the sales and use tax benefit period, in the case of a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand five, the term "base period" means the three taxable years immediately preceding the business enterprise's test year. For this purpose, the definitions set forth in subdivisions (d) and (e) of this section shall apply. However, the definition of the term "test date" in subdivision (e) shall be read as if the words "prior to July first, two thousand five" were omitted from such definition.

(d) Test year. The term "test year" means the last taxable year of the business enterprise ending before the test date. If a business enterprise does not have a taxable year that ends on or before the test date, such enterprise shall be deemed to have a test year which shall be either the last calendar year ending on or before its test date, or if the enterprise has as its taxable year a fiscal year, the last such fiscal year ending on or before its test date (whether or not the enterprise in fact had a taxable year during that period).

(e) Test date. The term "test date" means the later of July first, two thousand or the date prior to July first, two thousand eleven on which the business enterprise was first certified under article eighteen-B of the general municipal law.

(f) Taxable year. The term "taxable year" means the taxable year of the business enterprise under section one hundred eighty-three or one

hundred eighty-four or former section one hundred eighty-six of article nine, or under article nine-A, twenty-two or thirty-three of this chapter. If a business enterprise does not have a taxable year because it is exempt from taxation or otherwise not required to file a return under any of such sections of article nine or under article nine-A, twenty-two or thirty-three, then the term "taxable year" means (i) the business enterprise's federal taxable year, or, (ii) if the enterprise does not have a federal taxable year, the calendar year.

(g) Employment number. (1) The term "employment number" shall mean the average number of individuals, excluding general executive officers (in the case of a corporation), employed full-time by the enterprise for at least one-half of the taxable year. Such number shall be computed by determining the number of such individuals employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during the applicable taxable year, adding together the number of such individuals determined to be so employed on each of such dates and dividing the sum so obtained by the number of such dates occurring within such applicable taxable year. Such number shall not include individuals employed within the state within the immediately preceding sixty months by a related person to the QEZE, as such term "related person" is defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code. For this purpose, a "related person" shall include an entity which would have qualified as a "related person" to the QEZE if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate.

(2) For a business enterprise satisfying the criteria set forth in this paragraph, the term "employment number" with respect to the enterprise's first taxable year shall be computed by taking into consideration only the number of individuals, excluding general executive officers (in the case of a corporation), employed full-time by the enterprise on the last day of such taxable year. Such business enterprise shall satisfy the following criteria: (A) such enterprise acquired real or tangible personal property during its first taxable year from an entity which is not a related person (as such term is defined in paragraph one of this subdivision); (B) the first taxable year of such enterprise shall be a short taxable year of not more than

seven months in duration; and (C) the number of individuals employed full-time on the last day of such first taxable year shall be at least one hundred ninety and substantially all of such individuals must have been previously employed by the entity from whom such enterprise purchased its assets.

(h) Sales and use tax. (1) In addition to the other requirements of this section, for business enterprises certified pursuant to article eighteen-B of the general municipal law prior to April first, two thousand nine, in order for an exemption under subdivision (z) of section eleven hundred fifteen of this chapter or the credit or refund described in subdivision (d) of section eleven hundred nineteen of this chapter or any like exemption or credit or refund imposed pursuant to the authority of article twenty-nine of this chapter to apply with respect to a qualified empire zone enterprise, such enterprise shall apply to the commissioner of taxation and finance for the issuance of a qualified empire zone enterprise certification in the manner prescribed by the commissioner. If such commissioner grants such certification, such certification shall be subject to conditions specified by such commissioner. Nothing herein or in any other law shall be construed to prohibit the disclosure, in such manner as the commissioner of taxation and finance deems appropriate, of the names and other appropriate identifying information of those persons holding qualified empire zone certifications pursuant to this subdivision, those persons whose qualified empire zone enterprise certifications have been revoked or persons whose qualified empire zone enterprise certifications have expired. The commissioner shall not grant any certifications pursuant to this subdivision after June thirtieth, two thousand ten.

(2) A business enterprise, certified as an empire zone business under article eighteen-B of the general municipal law prior to April first, two thousand nine, and certified as a qualified empire zone enterprise by the commissioner of taxation and finance prior to August first, two thousand nine, is eligible to claim the exemption under subdivision (z) of section eleven hundred fifteen of this chapter or any like exemption from tax imposed pursuant to the authority of article twenty-nine of this chapter until September first, two thousand nine, provided that the other requirements of the statute are met. A business enterprise certified as an empire zone business under article eighteen-B of the

general municipal law prior to April first, two thousand nine, and certified as a qualified empire zone enterprise by the commissioner of taxation and finance as of or prior to June thirtieth, two thousand ten, is eligible to claim the credit or refund under subdivision (d) of section eleven hundred nineteen of this chapter or any like credit or refund imposed pursuant to the authority of article twenty-nine of this chapter, provided that the other requirements of the statute are met during the term of its sales and use tax benefit period notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law.

(3) During the period that a business enterprise is eligible to apply, or is qualified, for an exemption or a credit or refund of the sales and compensating use taxes under this section, the commissioner of economic development shall, at the time such commissioner certifies or decertifies a business enterprise under article eighteen-B of the general municipal law, notify the commissioner of taxation and finance of such certification or decertification, which notification shall include the full legal name, address and federal employer identification number of such enterprise. The commissioner of economic development shall, at the time of any such certification, also advise such enterprise of the requirements in paragraph one of this subdivision.

(i) Cessation of status. A business enterprise shall cease to be a qualified empire zone enterprise:

(1) for purposes of articles nine-A, twenty-two and thirty-three of this chapter, on the first day of the taxable year during which revocation of its certification under article eighteen-B of the general municipal law occurs, and

(2) for purposes of articles twenty-eight and twenty-nine of this chapter, on the day such revocation occurs.

(j) New business. (1) A new business shall include any corporation, except a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine; article nine-A or thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such

article was in effect on January first, nineteen hundred eighty), article thirty-two of this chapter or which would have been subject to tax under such article thirty-two (as such article was in effect on December thirty-first, two thousand fourteen) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter.

(2) For purposes of article twenty-two of this chapter, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business unless the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine; article nine-A or article thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty); article thirty-two of this chapter or which would have been subject to tax under such article thirty-two as such article was in effect on December thirty-first, two thousand fourteen or the income (or losses) of which is (or was) includable under article twenty-two.

(3) For purposes of article twenty-two of this chapter, a shareholder of a New York S corporation shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph one of this subdivision.

(4) (A)(i) Notwithstanding paragraphs one and two of this subdivision, a new business shall include any corporation which is identical in operation and ownership to a business entity (or entities) taxable under section one hundred eighty-three or one hundred eighty-four or former section one hundred eighty-five of article nine; article nine-A or thirty-three of this chapter or the income (or losses) of which is includable under article twenty-two of this chapter, provided such corporation and such business entity or entities are operating in different counties in the state.

(ii) Notwithstanding paragraphs one and two of this subdivision, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business if the business of which the

individual is an owner is identical in operation and in ownership to a business entity (or entities) taxable under section one hundred eighty-three or one hundred eighty-four or former section one hundred eighty-five of article nine; article nine-A or thirty-three of this chapter or the income (or losses) of which is includable under article twenty-two of this chapter, provided such business and such business entity or entities are operating in different counties in the state.

(iii) Any corporation qualifying as a new business or any individual qualifying as an owner of a new business as a result of the provisions of this subparagraph shall have the same business tax benefit period and sales and use tax benefit period as the business entity to which it is identical in operation and in ownership.

(B) Notwithstanding any provisions of this subdivision to the contrary and notwithstanding subdivision c of section eighteen of part CC of chapter eighty-five of the laws of two thousand two, a corporation or partnership, which was first certified under article eighteen-B of the general municipal law before August first, two thousand two, has a base period of zero years or zero employment for its base period, and is similar in operation and in ownership to a business entity or entities taxable, or previously taxable, under sections specified in paragraph one or two of this subdivision or which would have been subject to tax under article twenty-three of this chapter (as such article was in effect on January first, nineteen hundred eighty) or which would have been subject to tax under article thirty-two of this chapter (as such article was in effect on December thirty-first, two thousand fourteen) or the income or losses of which is or was includable under article twenty-two of this chapter shall not be deemed a new business if it was not formed for a valid business purpose, as such term is defined in clause (D) of subparagraph one of paragraph (o) of subdivision nine of section two hundred eight of this chapter and was formed solely to gain empire zone benefits.

(5) Notwithstanding any other provision of this section, a business enterprise which is approved by the commissioner of economic development as the owner of a qualified investment project or a significant capital investment project pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law, has a base period of zero years and places in service property (or a project that includes such

property) which comprises such qualified investment project or such significant capital investment project, shall be deemed to be a new business under this section. Provided, however, to be deemed a new business under this paragraph, such business enterprise shall have received certification under article eighteen-B of the general business law by December thirty-first, two thousand seven.

(k) If the designation of an area as an empire zone is no longer in effect because section nine hundred sixty-nine of the general municipal law was not amended to extend the effective date of such designation so that the designations of all empire zones pursuant to article eighteen-B of the general municipal law have expired, a business enterprise that was certified pursuant to article eighteen-B of the general municipal law on the day immediately preceding the day on which such designation expired shall be deemed to continue to be certified under such article eighteen-B for purposes of this section, and sections fifteen, sixteen, subdivisions five and six of section two hundred ten-B, subsections (bb) and (cc) of section six hundred six, subdivision (d) of section eleven hundred nineteen and subdivisions (r) and (s) of section fifteen hundred eleven of this chapter. In addition, if the designation of an area as an empire zone is no longer in effect because section nine hundred sixty-nine of the general municipal law was not amended to extend the effective date of such designation so that the designations of all empire zones pursuant to article eighteen-B of the general municipal law have expired, all references to empire zones in the provisions of this chapter listed in the previous sentence shall be read as meaning areas designated as empire zones on the day immediately preceding the day on which such designation expired.

(1) Manufacturer. For the purposes of sections fifteen and sixteen of this article, the term "manufacturer" shall mean a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, or a business engaged in emerging technologies pursuant to section thirty-one hundred two-e of the public authorities law.

(n) Clean energy enterprises. In determining tax benefits under this chapter for clean energy enterprises certified under article eighteen-B

of the general municipal law, references in this section and other sections in this chapter relating to qualified empire zone enterprises and empire zone benefits to "an empire zone", "the empire zone" and "the empire zones" shall be read as references to "New York State", and any tests or measurements relating to employment for purpose of empire zone benefits under this chapter shall be calculated with respect to employment within the entire state, and references to "QEZES" shall be read as including references to such clean energy enterprises that meet the employment test in this section. For purposes of the tax reduction credit allowed under section sixteen of this article, for a clean energy enterprise, the zone allocation factor shall be one hundred percent.

*** § 14-a. IMB credit for energy taxes.** (a) Allowance of credit. A taxpayer which is an industrial or manufacturing business (IMB), or which is a sole proprietor of an IMB or a member of a partnership which is an IMB, and which is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (d) of this section. Such credit shall be equal to the sum (or pro rata share of the sum, in the case of a member of a partnership) of the taxes imposed under sections one hundred eighty-six-a, one hundred eighty-six-c, one hundred eighty-nine and one hundred eighty-nine-a of this chapter which during the taxable year were either paid by, or passed through to, the IMB, on or after January first, two thousand, but only with regard to gas, electricity, steam, water or refrigeration, or gas, electric, steam, water or refrigeration services, consumed or used by the IMB in this state.

(b) Definitions. The term "industrial or manufacturing business" shall mean a business which during the taxable year is principally engaged in activities described in clause (A), (B) or (C), or any combination thereof, of subparagraph (i) of paragraph (b) of subdivision twelve of section two hundred ten of this chapter.

(c) Any person who collects from, or passes through to, the IMB, any tax as described in subdivision (a) of this section, shall provide the IMB with the information with respect to such tax passed through which may be required to enable the taxpayer to correctly compute the credit

provided for in this section.

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9-A: Section 210.26-a.

(2) Article 22: Sections 606(i) and (t-1).

* NB Expired for taxable years ending on and after January 1, 2007

§ 15. QEZE credit for real property taxes. (a) Allowance of credit. A taxpayer which is a qualified empire zone enterprise (QEZE), or which is a sole proprietor of a QEZE or a member of a partnership which is a QEZE, and which is subject to tax under article nine-A, twenty-two or thirty-three of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (h) of this section, for eligible real property taxes.

(b) Amount of credit. (1) In the case of a business enterprise which is first certified under article eighteen-B of the general municipal law before April first, two thousand five, the amount of the credit shall be equal to the product (or pro rata share of the product, in the case of a member of a partnership) of (i) the benefit period factor, (ii) the employment increase factor and (iii) the eligible real property taxes paid or incurred by the QEZE during the taxable year. However the amount of the credit may not exceed the credit limitation set forth in subdivision (f) of this section.

(2) (A) For a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand five, and notwithstanding any other provision to the contrary, in the case of a business enterprise which was first certified between August first, two thousand two and March thirty-first, two thousand five that conducts its operations on real property that it owns or leases that is both located within an empire zone and that is subject to a brownfield site cleanup agreement executed prior to January first, two thousand six in accordance with section 27-1409 of the environmental conservation law, the amount of the credit shall be equal to the product (or pro rata share of the product, in the case of a member of a partnership) of twenty-five percent of the total wages, health benefits and retirement benefits paid to or on behalf of net new employees during

the taxable year, provided however, that the total amount of the credit shall not exceed ten thousand dollars for each such employee. For purposes of computing total wages, health benefits and retirement benefits, wages, health benefits and retirement benefits for each employee in excess of forty thousand dollars shall be excluded from such computation. Provided however, the amount of the credit for a QEZE certified in an empire zone designated under subdivision (b) or (c) of section nine hundred fifty-eight of the general municipal law, except a manufacturer certified in an empire zone designated under section nine hundred fifty-eight of the general municipal law, shall be further adjusted by the product of the amount determined above and the development zone employment increase factor under subparagraph (B) of this paragraph. Provided further, in addition, the amount of the credit may not exceed the credit amount set forth in subdivision (f-1) of this section.

(B) Development zone employment increase factor. The development zone employment increase factors are set forth in the following table:

Net New Employees:	DZ Employment Increase Factor:
1 to 10	0.25
11 to 49	0.5
50 to 75	0.75
76 and above	the amount, not to exceed 1.0, of new employees divided by 100

Net new employees. The number of net new employees for a QEZE is equal to the excess of the QEZE's employment number in the empire zones with respect to which the QEZE is certified pursuant to article eighteen-B of the general municipal law for the taxable year, over the QEZE's employment number in such zones for the base period.

(3) For a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand nine, the credit allowed shall be seventy-five percent of the amount calculated under paragraph two of this subdivision.

(c) Benefit period factor. The benefit period factors are set forth in the following table:

Taxable year of the benefit period:	Benefit period factor:
1 - 10	1.0

11	.8
12	.6
13	.4
14	.2
15	0

(d) Employment increase factor. The employment increase factor is the amount, not to exceed 1.0, which is the greater of:

(1) the excess of the QEZE's employment number in the empire zones with respect to which the QEZE is certified pursuant to article eighteen-B of the general municipal law for the taxable year, over the QEZE's test year employment number in such zones, divided by such test year employment number in such zones; or

(2) the excess of the QEZE's employment number in such zones for the taxable year over the QEZE's test year employment number in such zones, divided by 100.

(3) For purposes of paragraph one of this subdivision, where there is an excess as described in such paragraph, and where the test year employment number is zero, then the employment increase factor shall be 1.0.

(e) Eligible real property taxes. The term "eligible real property taxes" means taxes imposed on real property which is owned by the QEZE and located in an empire zone with respect to which the QEZE is certified pursuant to article eighteen-B of the general municipal law, provided such taxes are paid by the QEZE which is the owner of the real property or are paid by a tenant which either (i) does not meet the eligibility requirements under section fourteen of this article to be a QEZE or (ii) cannot treat such payment as eligible real property taxes pursuant to this paragraph and such taxes become a lien on the real property during a taxable year in which the owner of the real property is both certified pursuant to article eighteen-B of the general municipal law and a qualified empire zone enterprise. For purposes of this subdivision, the term "tax" means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction, and provided that where taxes

are levied pursuant to article eighteen or article nineteen of the real property tax law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by such article eighteen or nineteen, whichever is applicable. The term "tax" does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when (1) the property subject to the charge is limited to the property that benefits from the charge, or (2) the amount of the charge is determined by the benefit to the property assessed, or (3) the improvement for which the charge is assessed tends to increase the property value. In addition, "eligible real property taxes" shall include taxes paid by a QEZE which is a lessee of real property if the following conditions are satisfied: (1) the taxes must be paid by the lessee pursuant to explicit requirements in a written lease executed or amended on or after June first, two thousand five, (2) such taxes become a lien on the real property during a taxable year in which the lessee of the real property is both certified pursuant to article eighteen-B of the general municipal law and a qualified empire zone enterprise, and (3) the lessee has made direct payment of such taxes to the taxing authority and has received a receipt for such payment of taxes from the taxing authority. In addition, the term "eligible real property taxes" includes payments in lieu of taxes made by the QEZE to the state, a municipal corporation or a public benefit corporation pursuant to a written agreement entered into between the QEZE and the state, municipal corporation, or public benefit corporation. Provided, however, a payment in lieu of taxes made by the QEZE pursuant to a written agreement executed or amended on or after January first, two thousand one, shall not constitute eligible real property taxes in any taxable year to the extent that such payment exceeds the product of (A) the greater of (i) the basis for federal income tax purposes, calculated without regard to depreciation, determined as of the effective date of the QEZE's certification pursuant to article eighteen-B of the general municipal law of real property, including buildings and structural components of buildings, owned by the QEZE and located in empire zones with respect to which the QEZE is certified pursuant to such article eighteen-B of the general municipal law, and provided that if such basis is further adjusted or reduced pursuant to any provision of the internal revenue

code, the QEZE may petition the department and the department of economic development to disregard such reduction or adjustment for the purpose of this subdivision or (ii) the basis for federal income tax purposes of such real property described in clause (i) of this subparagraph, calculated without regard to depreciation, on the last day of the taxable year, and provided that if such basis is further adjusted or reduced pursuant to any provision of the internal revenue code, the QEZE may petition the department, the department of economic development and the office of real property services to disregard such reduction or adjustment for the purpose of this subdivision; and (B) the estimated effective full value tax rate within the county in which such property is located, as most recently calculated by the commissioner. The commissioner shall annually calculate estimated effective full value tax rates within each county for this purpose based upon the most current information available to him or her in relation to county, city, town, village and school district taxes.

(f) In the case of a business enterprise which is first certified under article eighteen-B of the general municipal law on or after August first, two thousand two and before April first, two thousand five, the credit limitation shall be the greater of the employment increase limitation or the capital investment limitation.

(1) The employment increase limitation shall be the product of (A) ten thousand dollars and (B) the excess of the QEZE's employment number in the empire zones with respect to which the QEZE is certified pursuant to article eighteen-B of the general municipal law for the taxable year, over the QEZE's test year employment number in such zones.

(2) The capital investment limitation shall be the product of (A) ten percent of the greater of (i) the cost or other basis for federal income tax purposes, determined on the later of January first, two thousand one or the effective date of the QEZE's certification pursuant to article eighteen-B of the general municipal law, of real property, including buildings and structural components of buildings, owned by the QEZE and located in empire zones with respect to which the QEZE is certified pursuant to such article eighteen-B of the general municipal law, or (ii) the cost or other basis for federal income tax purposes of such real property described in clause (i) of this subparagraph on the last day of the taxable year, and (B) the greater of (i) the percentage of

such real property described in clause (i) of subparagraph (A) of this paragraph which is physically occupied and used by the QEZE or by a related person to the QEZE, as the term "related person" is defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, or (ii) the percentage of such cost or other basis which is attributable to the construction, expansion or rehabilitation of such property, rather than the acquisition of such real property, by the QEZE. Provided, however, if the percentage of such cost or other basis, which is attributable to the construction, expansion or rehabilitation of such real property equals or exceeds fifty percent, then the percentage described in clause (ii) of subparagraph (B) of this paragraph shall be deemed to be one hundred percent.

(f-1) In the case of a business enterprise which is first certified under article eighteen-B of the general municipal law on or after April first, two thousand five, the credit shall be the greater of the credit amount as determined pursuant to paragraph two of subdivision (b) of this section, or the capital investment amount determined under this subdivision. Provided however, that in no case shall the amount of the credit exceed the amount of the taxpayer's eligible real property taxes for the taxable year.

(1) For a QEZE certified in an empire zone designated under subdivision (a) or (d) of section nine hundred fifty-eight of the general municipal law and a manufacturer certified in an empire zone designated under section nine hundred fifty-eight of the general municipal law, the capital investment amount shall be the product of (A) ten percent of the greater of (i) the cost or other basis for federal income tax purposes, determined on the later of January first, two thousand one or the effective date of the QEZE's certification pursuant to article eighteen-B of the general municipal law, of real property, including buildings and structural components of buildings, owned by the QEZE and located in empire zones with respect to which the QEZE is certified pursuant to such article eighteen-B of the general municipal law, or (ii) the cost or other basis for federal income tax purposes of such real property described in clause (i) of this subparagraph on the last day of the taxable year, and (B) the greater of (i) the percentage of such real property described in clause (i) of subparagraph (A) of

this paragraph which is physically occupied and used by the QEZE or by a related person to the QEZE, as the term "related person" is defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, or (ii) the percentage of such cost or other basis which is attributable to the construction, expansion or rehabilitation of such property, rather than the acquisition of such real property, by the QEZE. Provided, however, if the percentage of such cost or other basis, which is attributable to the construction, expansion or rehabilitation of such real property equals or exceeds fifty percent, then the percentage described in clause (ii) of subparagraph (B) of this paragraph shall be deemed to be one hundred percent.

(2) For a QEZE certified in an empire zone designated under subdivision (b) or (c) of section nine hundred fifty-eight of the general municipal law, which is not a manufacturer, the capital investment amount shall be the product of ten percent and the amount of such cost or other basis which is attributable to the construction, expansion or rehabilitation of such property, rather than the acquisition of such real property, and the percentage of such real property described in clause (i) of subparagraph (A) of paragraph (1) of this subdivision which is physically occupied and used by the QEZE or by a related person to the QEZE, as the term "related person" is defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code. Provided, however, if the percentage of such cost or other basis, which is attributable to the construction, expansion or rehabilitation of such real property equals or exceeds fifty percent, then the percentage of physical occupation and use described in the preceding sentence shall be deemed to be one hundred percent.

(g) Credit recapture. Where a QEZE's eligible real property taxes which were the basis for the allowance of the credit provided for under this section are subsequently reduced as a result of a final order in any proceeding under article seven of the real property tax law or other provision of law, the taxpayer shall add back, in the taxable year in which such final order is issued, the excess of (1) the amount of credit originally allowed for a taxable year over (2) the amount of credit determined based upon the reduced eligible real property taxes. If such

final order reduces real property taxes for more than one year, the taxpayer must determine how much of such reduction is attributable to each year covered by such final order and calculate the amount of credit which is required by this subdivision to be recaptured for each year based on such reduction.

(h) Definitions and cross-references. For definitions of terms used in this section see section fourteen of this article. For application of the credit provided for in this section, see the following provisions of this chapter:

(2) Article 9-A: Section 210-B: subdivision 5.

(3) Article 22: Section 606: subsections (i) and (bb).

(4) Article 33: Section 1511: subdivision (r).

§ 16. QEZE tax reduction credit. (a) Allowance of credit. A taxpayer which is a qualified empire zone enterprise (QEZE), or which is a sole proprietor of a QEZE or a member of a partnership which is a QEZE, and which is subject to tax under article nine-A, twenty-two or thirty-three of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section, to be computed as hereinafter provided.

(b) Amount of credit. The amount of the credit shall be the product of (i) the benefit period factor, (ii) the employment increase factor, (iii) the zone allocation factor and (iv) the tax factor.

(c) Benefit period factor. The benefit period factor for the taxable year shall be as prescribed in subdivision (c) of section fifteen of this article.

(d) Employment increase factor. The employment increase factor for the taxable year shall be as prescribed in subdivision (d) of section fifteen of this article.

(e) Zone allocation factor. The zone allocation factor shall be the percentage representing the QEZE's economic presence in empire zones with respect to which the QEZE is certified under article eighteen-B of the general municipal law. This percentage shall be computed by:

(1) ascertaining the percentage which the average value of the QEZE's real and tangible personal property, whether owned or rented to it, in empire zones with respect to which the QEZE is certified under article

eighteen-B of the general municipal law during the period covered by the taxpayer's report or return bears to the average value of the QEZE's real and tangible personal property, whether owned or rented to it, within the state during such period; provided that the term "value of the QEZE's real and tangible personal property" shall have the same meaning as such term has in subparagraph one of paragraph (a) of subdivision three of section two hundred ten of this chapter; and

(2) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of employees, except general executive officers, of the QEZE in empire zones with respect to which the QEZE is certified under article eighteen-B of the general municipal law, to the total wages, salaries and other personal service compensation, similarly computed, during such period, of all the QEZE's employees within the state, except general executive officers; and

(3) adding together the percentages so determined and dividing the result by the number of percentages.

For purposes of article twenty-two of this chapter, references in this subdivision to property, wages, salaries and other personal service compensation shall be deemed to be references to such items connected with the conduct of a business.

(f) Tax factor. (1) General. The tax factor shall be, in the case of article nine-A of this chapter, the amount of tax determined for the taxable year under paragraph (a) of subdivision one of section two hundred ten of such article. The tax factor shall be, in the case of article twenty-two of this chapter, the tax determined for the taxable year under subsections (a) through (d) of section six hundred one of such article. The tax factor shall be, in the case of article thirty-three of this chapter, the larger of the amounts of tax determined for the taxable year under paragraphs one and three of subdivision (a) of section fifteen hundred two of such article.

(2) Sole proprietors, partners and S corporation shareholders. (A) Where the taxpayer is a sole proprietor of a qualified empire zone enterprise, the taxpayer's tax factor shall be that portion of the amount determined in paragraph one of this subdivision which is attributable to the income of the qualified empire zone enterprise. Such

attribution shall be made in accordance with the ratio of the taxpayer's income from the qualified empire zone enterprise allocated within the state, entering into New York adjusted gross income, to the taxpayer's New York adjusted gross income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment which reasonably reflects the portion of the taxpayer's tax attributable to the income of the qualified empire zone enterprise. In no event may the ratio so determined exceed 1.0.

(B)(i) Where the taxpayer is a member of a partnership which is a qualified empire zone enterprise, the taxpayer's tax factor shall be that portion of the amount determined in paragraph one of this subdivision which is attributable to the income of the partnership. Such attribution shall be made in accordance with the ratio of the partner's income from the partnership allocated within the state to the partner's entire income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment which reasonably reflects the portion of the partner's tax attributable to the income of the partnership. In no event may the ratio so determined exceed 1.0.

(ii) For purposes of article nine-A of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into business income and the term "partner's entire income" means business income allocated within the state. For purposes of article thirty-three of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into entire net income or entire net income plus compensation and the term "partner's entire income" means entire net income, or entire net income plus compensation, allocated within the state. For purposes of article twenty-two of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into New York adjusted gross income, and the term "partner's entire income" means New York adjusted gross income.

(C) Where the taxpayer is a shareholder of a New York S corporation which is a qualified empire zone enterprise, the shareholder's tax

factor shall be that portion of the amount determined in paragraph one of this subdivision which is attributable to the income of the S corporation. Such attribution shall be made in accordance with the ratio of the shareholder's income from the S corporation allocated within the state, entering into New York adjusted gross income, to the shareholder's New York adjusted gross income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment which reasonably reflects the portion of the shareholder's tax attributable to the income of the qualified empire zone enterprise. In no event may the ratio so determined exceed 1.0.

(3) Combined returns or reports. (A) Where the taxpayer is a qualified empire zone enterprise and is required or permitted to make a return or report on a combined basis under article nine-A or article thirty-three of this chapter, the taxpayer's tax factor shall be the amount determined in paragraph one of this subdivision which is attributable to the income of the qualified empire zone enterprise. Such attribution shall be made in accordance with the ratio of the qualified empire zone enterprise's income allocated within the state to the combined group's income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment which reasonably reflects the portion of the combined group's tax attributable to the income of the qualified empire zone enterprise. In no event may the ratio so determined exceed 1.0.

(B) The term "income of the qualified empire zone enterprise" means entire net income, minimum taxable income, alternative entire net income or entire net income plus compensation calculated as if the taxpayer was filing separately and the term "combined group's income" means entire net income, minimum taxable income, alternative entire net income or entire net income plus compensation as shown on the combined return or report, allocated within the state.

(4) If the amount determined in paragraph one of this subdivision is less than zero, a taxpayer shall not be allowed a credit under this section.

(g) Definitions and cross-references. For definitions of terms used in this section see sections fourteen and fifteen of this article. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) Article 9-A: Section 210-B: subdivision 6.
- (2) Article 22: Section 606: subsections (i) and (cc).
- (3) Article 33: Section 1511: subdivision (s).

§ 17. Empire zones tax benefits report. (a) The department of taxation and finance must publish an empire zones tax benefits report annually by June thirtieth. The first report must be published by June thirtieth, two thousand eleven.

(b) (1) The empire zones tax benefits report must contain the following information about the empire zone tax credits claimed under articles nine, nine-A, twenty-two and thirty-three of this chapter during the previous calendar year:

- (A) the name of each taxpayer claiming a credit; and
- (B) the amount of each credit earned by each taxpayer.

(2) If the taxpayer claims a empire zone tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of those credits and the amount of credit earned by each entity must be included in the report instead of information about the taxpayer claiming the credit.

(c) The empire zones tax benefits report must also contain the following information about the sales and use tax refunds and credits claimed under subdivision (d) of section eleven hundred nineteen of this chapter during the previous calendar year:

- (A) the name of each taxpayer claiming a credit or refund; and
- (B) the total amount of credits or refunds allowed to each taxpayer.

(d) The information included in the empire zones tax benefits report will be based on the information filed with the department during the previous calendar year, to the extent that it is practicable to use that information.

§ 18. Low-income housing credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the

provisions referenced in subdivision (d) of this section, with respect to the ownership of eligible low-income buildings for which an eligibility statement has been issued by the commissioner of housing and community renewal. The amount of the credit shall be the credit amount for each such building allocated by such commissioner as provided in article two-A of the public housing law. The credit amount shall be allowed for each of the ten taxable years in the credit period, and any reduction in first-year credit as provided in subdivision two of section twenty-two of such law shall be allowed in the eleventh taxable year.

(b) Credit recapture. (1) General. If,

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

(C) then the credit recapture amount must be added back for the taxable year.

(2) Credit recapture amount. The credit recapture amount is an amount equal to the sum of

(A) the aggregate decrease in the credits allowed to the taxpayer under this section for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in subparagraph (B) of paragraph (1) of this subdivision over the amount described in subparagraph (A) of such paragraph, plus

(B) interest at the overpayment rate established under section one thousand ninety-six of this chapter on the amount determined under subparagraph (A) of this paragraph for each prior taxable year for the period beginning on the due date for filing the report for the prior taxable year involved.

(3) Accelerated portion of credit. For purposes of paragraph two of this subdivision, the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of

(A) the aggregate credit allowed by reason of this section (without regard to this subdivision) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subdivision) have been allowed for the entire compliance period were allowable ratably over fifteen years.

(4) Special rules. For purposes of this subdivision, the rules of section 42 (j)(4)(B) and (C) of the internal revenue code shall apply in determining the credit recapture amount.

(5) Exceptions to recapture. Recapture under this subdivision shall not apply to a reduction in qualified basis

(A) by reason of a casualty loss, if the commissioner, in consultation with the commissioner of housing and community renewal, determines that such loss is restored by reconstruction or replacement within a reasonable period, or

(B) by reason of a change in floor space devoted to low-income units in a building, if such building remains an eligible low-income building after such change, and if the commissioner, in consultation with the commissioner of housing and community renewal, determines that such change is de minimis, or

(C) by reason of error in complying with low-income eligibility tests referred to in subdivision five of section twenty-one of the public housing law, if the commissioner, in consultation with the commissioner of housing and community renewal, determines that such error is de minimis.

(6) Recapture by partners of a partnership. In the case of ownership of a building or interest therein by a partnership which has thirty-five or more partners, the provisions of section 42(j)(5) of the internal revenue code shall apply to any recapture under this subdivision unless the partnership elects not to have such provisions apply.

(6-a) The taxpayer that originally received the credit shall remain solely liable for all obligations and liabilities imposed on the taxpayer with respect to the credit, none of which shall apply to a party to whom the credit has been subsequently transferred.

(7) (A) The credit recapture required under this subdivision will not apply solely by reason of the disposition of a building or an interest therein if it is reasonably expected that such building will continue to be operated as an eligible low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations. If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this section for such taxable or any subsequent taxable year, then

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax will not expire before the expiration of three years from the date the commissioner of housing and community renewal is notified by the taxpayer (in such manner as the commissioner of housing and community renewal may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(c) Construction with public housing law; definitions. The provisions of this section shall be construed in conjunction with the provisions of article two-A of the public housing law. For definitions relating to the low-income housing credit, see section twenty-one of such law.

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) Article 9-A: Section 210-B: subdivision 15,
- (2) Article 22: Section 606: subsections (i) and (x),
- (3) Article 33: Section 1511: subdivision (n).

§ 19. Green building credit. (a) Allowance of credit. (1) General. (A) Green building credit. A taxpayer subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter shall be allowed a green building credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. Provided, however, no credit shall be allowed under this section unless the taxpayer has complied with the applicable requirements of paragraph two of subdivision (d) of this section (relating to reports to DEC). The amount of the credit shall be the sum of the credit components specified in paragraphs two through seven of this subdivision. Provided, however, the amount of each such credit component shall not exceed the limit set forth in the initial credit component certificate obtained pursuant to subdivision (c) of this section. In the determination of such credit

components, no cost paid or incurred by the taxpayer shall be the basis for more than one such component.

(B) Credit to successor owner. If a credit is allowed to a building owner pursuant to this subdivision with respect to property, and such property (or an interest therein) is sold, the credit for the period after the sale which would have been allowable under this subdivision to the prior owner had the property not been sold shall be allowable to the new owner. Credit for the year of sale shall be allocated between the parties on the basis of the number of days during such year that the property or interest was held by each.

(C) Credit to successor tenant. If a credit is allowed to a tenant pursuant to this subdivision with respect to property, and if such tenancy is terminated but such property remains in use in the building by a successor tenant, the credit for the period after such termination which would have been allowable under this subdivision to the prior tenant had the tenancy not been terminated shall be allowable to the successor tenant. Credit for the year of termination shall be allocated between the parties on the basis of the number of days during such year that the property was used by each.

(D) Notwithstanding any other provision of law to the contrary, in the case of allowance of credit under this section to a successor owner or tenant, as provided in subparagraph (B) or (C) of this paragraph, the commissioner shall have the authority to reveal to the successor owner or tenant any information, with respect to the credit of the prior owner or tenant, which is the basis for the denial in whole or in part of the credit claimed by such successor owner or tenant.

(2) Green whole-building credit component. The green whole-building credit component shall be equal to the applicable percentage of the allowable costs paid or incurred by the taxpayer (whether owner or tenant), for either the construction of a green building or the rehabilitation of a building which is not a green building to be a green building. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The applicable percentage shall be 1.4 percent, except that if the building is located in an economic development area, the applicable percentage shall be 1.6 percent. The credit component amount so determined shall be allowed for the credit allowance year, but only if

(A) the taxpayer has obtained and filed both an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section, (B) a certificate of occupancy for the building has been issued and (C) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the green building or rehabilitation remains in service during such year. Such credit component amount shall be allowed also for each of the next four succeeding taxable years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant to subdivision (c) of this section. Provided, further, the allowable costs may not exceed, in the aggregate, one hundred fifty dollars per square foot with respect to the portion of the building which comprises the base building and seventy-five dollars per square foot with respect to the portion of the building which comprises the tenant space.

(3) Green base building credit component. The green base building credit component shall be equal to the applicable percentage of the allowable costs paid or incurred by the taxpayer, if the owner, for either the construction of a green base building or for the rehabilitation of a base building which is not a green base building to be a green base building. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The applicable percentage shall be one percent, except that if the building is located in an economic development area, the applicable percentage shall be 1.2 percent. The credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed both an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section, (B) a certificate of occupancy for the building has been issued and (C) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the green base building or rehabilitation of a base building remains in service during such year. Such credit component amount shall be allowed also for each of the next four succeeding taxable years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant to subdivision (c) of this section. Provided, further, the allowable costs for the base building may not exceed, in the aggregate, one hundred fifty dollars per square foot.

(4) Green tenant space credit component. The green tenant space credit component shall be equal to the applicable percentage of allowable costs for tenant improvements paid or incurred by the taxpayer (whether owner or tenant) in constructing (including completing) tenant space, or rehabilitating tenant space which is not green tenant space to be green tenant space. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The applicable percentage shall be one percent, except that if the building is located in an economic development area the applicable percentage shall be 1.2 percent. Provided, however, that the owner, or a tenant who occupies fewer than ten thousand square feet, shall qualify for such green tenant space credit component only in the event that the base building is a green base building. The credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the construction, completion or rehabilitation remains in service during such year. Such credit component amount shall be allowed also for each of the next four succeeding taxable years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant to subdivision (c) of this section. Provided, however, the allowable costs for tenant space shall not exceed, in the aggregate, seventy-five dollars per square foot. In the event that both an owner and tenant incur such costs for tenant space with respect to the same tenant space and such costs in the aggregate exceed seventy-five dollars per square foot, the owner shall have priority as to costs constituting the basis for the green tenant space credit component.

(5) Fuel cell credit component. A fuel cell credit component shall be allowed for the installation of a fuel cell which is a qualifying alternate energy source, installed to serve a green building, green base building or green tenant space. The amount of the credit component shall be six percent of the sum of the capitalized costs paid or incurred by the taxpayer with respect to each fuel cell installed to serve such building or space, including the cost of the foundation or platform and

the labor cost associated with installation, such capitalized costs not to exceed one thousand dollars per kilowatt of installed DC rated capacity. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The fuel cell credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the fuel cell remains in service during such year. Such credit component amount shall be allowed also with respect to each of the four taxable years next following during which the fuel cell remains in service. Provided, however, that the amount of any federal, state or local grant received by the taxpayer and used for the purchase and/or installation of such fuel cell and which was not included in the federal gross income of the taxpayer shall be subtracted from the amount of such cost.

(6) Photovoltaic module credit component. A photovoltaic module credit component shall be allowed for the installation of photovoltaic modules which constitute a qualifying alternate energy source installed to serve a green building, green base building or green tenant space. The amount of the credit component shall be twenty percent of the incremental cost paid or incurred by the taxpayer for building-integrated photovoltaic modules and five percent of the cost of non-building-integrated photovoltaic modules, in either case such cost not to exceed the product of (i) three dollars and (ii) the number of watts included in the DC rated capacity of the photovoltaic modules. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the modules remain in service during such year. Such credit amount shall be allowed also for the four taxable years next following during which the modules remain in service.

Provided, however, that the amount of any federal, state or local grant received by the taxpayer and used for the purchase and/or installation of such photovoltaic equipment and which was not included in the federal gross income of the taxpayer shall be subtracted from the amount of such cost.

(7) Green refrigerant component. A green refrigerant component shall be allowed for new air conditioning equipment (including chillers and absorption chillers, water or air cooled unitary equipment, water-cooled heat pumps, packaged terminal heat pumps, air conditioners, and other similar air conditioning equipment) that uses an EPA-approved non-ozone depleting refrigerant installed to serve a green building, green base building or green tenant space. The amount of the credit component shall be two percent of the cost of such air conditioning equipment. The commissioner of environmental conservation, in consultation with NYSERDA, shall promulgate regulations concerning the eligibility of other EPA-approved refrigerants to receive a credit pursuant to this paragraph. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The green refrigerant component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section, and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the air conditioning equipment remains in service. Such credit component amount shall be allowed also with respect to each of the four taxable years next following during which the air conditioning equipment remains in service.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Allowable costs" means amounts properly chargeable to capital account (other than for land), which are paid or incurred on or after June first, nineteen hundred ninety-nine, for: construction or rehabilitation; commissioning costs; interest paid or incurred during the construction or rehabilitation period; legal, architectural, engineering and other professional fees allocable to construction or rehabilitation; closing costs for construction, rehabilitation or

mortgage loans; recording taxes and filing fees incurred with respect to construction or rehabilitation; site costs (such as temporary electric wiring, scaffolding, demolition costs, and fencing and security facilities); and costs of furniture, carpeting, partitions, walls and wall coverings, ceilings, drapes, blinds, lighting, plumbing, electrical wiring and ventilation; provided that such costs shall not include the cost of telephone systems and computers (other than electrical wiring costs) and shall not include the cost of fuel cells or photovoltaic modules (including installation) or the cost of new air conditioning equipment using an EPA-approved non-ozone depleting refrigerant or other EPA-approved refrigerant approved by the commissioner of environmental conservation (excluding installation).

(2) "Base building" means all areas of a building not intended for occupancy by a tenant or owner, including but not limited to the structural components of the building, exterior walls, floors, windows, roofs, foundations, chimneys and stacks, parking areas, mechanical rooms and mechanical systems, and owner-controlled and/or operated service spaces, sidewalks, main lobby, shafts and vertical transportation mechanisms, stairways and corridors.

(2-a) "Credit allowance year" means the later of (A) the taxable year during which the property, construction, completion or rehabilitation referred to in paragraphs two through seven of subdivision (a) of this section has been placed in service or has received a final certificate of occupancy or (B) the first taxable year with respect to which the credit may be claimed pursuant to the initial credit component certificate issued pursuant to subdivision (c) of this section.

(3) "Commissioning" means the testing and fine-tuning of heat, ventilating and air conditioning and other systems to assure proper functioning and adherence to design criteria and the preparation of system operation manuals and instruction of maintenance personnel.

(4) "DEC" means the New York state department of environmental conservation. "DOH" means the New York state department of health. "EPA" means the United States environmental protection agency.

(5) "Economic development area" means an area which is designated (A) an empire zone pursuant to article eighteen-B of the general municipal law or (B) an empowerment zone or enterprise community pursuant to section 1391 of the Internal Revenue Code.

(6) "Eligible building" means a building located in this state which is:

(A) classified B2, B3, B4, C1, C2, C5, or C6 for purposes of the New York state uniform fire prevention and building code or similarly classified under any subsequent code; provided that any such building contains at least twenty thousand square feet of interior space, or

(B) a residential multi-family building with at least twelve dwelling units that contain at least twenty thousand square feet of interior space, or

(C) one or more residential multi-family buildings with at least two dwelling units that are part of a single or phased construction project that contains, in the aggregate, at least twenty thousand square feet of interior space; provided that in any single phase of such project at least ten thousand square feet of interior space is under construction or rehabilitation, or

(D) any combination of buildings described in subparagraphs (A), (B) and (C) of this paragraph, and

(E) is not a building located on freshwater wetlands or tidal wetlands the construction of which requires a permit under section 24-0701 or 25-0403, respectively, of the environmental conservation law, or on wetlands such that the construction thereof requires a permit pursuant to section 404 of the federal clean water act (33 U.S.C. § 1344).

(7) "Energy code" means the New York state energy conservation construction code.

(8) "Fuel cell" means a device that produces electricity directly from hydrogen or hydrocarbon fuel through a non-combustive electro-chemical process.

(9) "Green base building" means a base building which is part of an eligible building and which meets the following standards:

(A) Energy and energy efficiency. (i) Energy use is no more than sixty-five percent (in the case of new construction of a base building) or seventy-five percent (in the case of rehabilitation of a base building) of the use permitted under the energy code or, in the event such standard is revised or superseded, energy use shall meet such other energy efficiency standards that DEC, in consultation with NYSERDA, shall establish in regulations promulgated pursuant to paragraph one of subdivision (e) of this section, in effect at the time the base building

or rehabilitation thereof is placed in service.

(ii) All appliances and any heating, cooling and water heating equipment used in the base building and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to paragraph one of subdivision (e) of this section, shall meet the standards established by such regulations in effect at the time the base building or rehabilitation thereof is placed in service.

(B) Zoning, indoor air quality, building materials, finishes and furnishings. (i) The base building shall comply with all applicable zoning, land use and erosion control requirements, stormwater management ordinances, building code requirements and environmental regulations. In the case of the rehabilitation of an existing building, all existing environmental hazards shall be identified and managed in accordance with applicable laws, regulations and industry guidelines.

(ii) Buildings classified B2, B3, B4, C1, C2, C5, or C6, for purposes of the New York state uniform fire prevention and building code, or similarly classified under any subsequent code, shall meet the following indoor air quality requirements:

(I) ventilation and exchange of indoor/outdoor air shall meet the standards established by regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section;

(II) if smoking is permitted in specific areas of the building, separate air ventilation and circulation shall be provided for smoking and non-smoking areas;

(III) the ventilation system shall include an air purging system that is capable of replacing one hundred percent of the air on any floor, on a minimum of two floors at a time. The air shall be purged for a period of one week on every floor immediately prior to initial occupancy and on any floor that undergoes renovation immediately prior to re-occupancy; provided that, if a taxpayer obtains certification from a licensed architect, engineer, certified industrial hygienist, or other licensed or certified professional whom the commissioner of environmental conservation shall approve, pursuant to regulations, verifying that off-gassing and any other contamination can be reduced to comparable levels in less than one week, the period of purging may be shortened. The taxpayer shall maintain a copy of such certification in accordance

with the provisions of subdivision (d) of this section.

(C) Building fresh air intake shall be located a minimum of twenty-five feet away from loading areas, building exhaust fans, cooling towers and other point sources of contamination.

(D) During construction or rehabilitation, the ventilation system components and pathways shall be protected from contamination in accordance with an indoor air quality management plan for the construction or rehabilitation process that meets the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section. In the event that such areas are not protected from contamination in accordance with such standards, they shall be cleaned prior to occupancy.

(E) A licensed engineer, certified industrial hygienist, or other licensed or certified professional whom the commissioner of environmental conservation shall approve, pursuant to regulations, shall conduct indoor air quality testing with respect to the entire building immediately following occupancy, if any, and on an annual basis, to monitor supply and return air and ambient air for carbon monoxide, carbon dioxide, total volatile organic compounds, radon, and particulate matter. Provided, however, once radon measurements have been found to be satisfactory, subsequent annual testing is not required. The taxpayer shall record baseline readings immediately following occupancy, if any, and annually thereafter. In the event that the taxpayer does not establish that during a taxable year during which any part of the building is occupied, indoor air quality met the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section, the base building shall not constitute a green base building.

(F) The mechanical plant of the building shall be commissioned in accordance with the standards established in regulations promulgated by DEC, in consultation with NYSERDA, pursuant to subparagraph (D) of paragraph one of subdivision (e) of this section, which standards shall be informed by documents such as ASHRAE G-1 and the United States general services administration "Model Commissioning Plan and Guide Specifications". For purposes of this subparagraph the term "ASHRAE" means the American society of heating, refrigerating and air

conditioning engineers.

(G) Separate waste disposal chutes or a carousel compactor system for recyclable materials shall be provided for the recycling of waste by occupants, or recycling shall be otherwise facilitated by, at a minimum, providing a readily accessible designated collection area or areas with sufficient space to store recyclable materials separately between collection dates.

(H) All plumbing fixtures in the public areas of the building shall meet the plumbing fixture requirements of the energy policy act of 1992 or any successor provision in effect at the time the building or rehabilitation is placed in service.

(I) Prior to initial occupancy and upon request, the owner of the building shall provide each tenant with (1) written notification of the opportunity to apply for a tax credit pursuant to this section and (2) written guidelines regarding opportunities to improve the energy efficiency and air quality of tenant space and to reduce and recycle waste streams.

(J) All building materials, finishes and furnishings used in the base building and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to subparagraph (A) of paragraph three of subdivision (e) of this section, shall meet the standards established by such regulations in effect at the time the building or rehabilitation is placed in service; provided further that with respect to furnishings, this requirement shall apply only to newly purchased items.

(K) All tenant space in the building occupied by the owner must be green tenant space.

(10) "Green building" means a building wherein the base building is a green base building and all tenant space is green tenant space.

(11) "Green tenant space" means tenant space in a building if such building is an eligible building and if such tenant space complies with the following requirements:

(A) Energy and energy efficiency. (i) Energy use for tenant space is no more than sixty-five percent (in the case of new construction) or seventy-five percent (in the case of rehabilitation) of the use permitted under the energy code or, in the event such standard is revised or superseded, energy use shall meet such other energy

efficiency standards that DEC, in consultation with NYSERDA, shall establish in regulations promulgated pursuant to paragraph one of subdivision (e) of this section, in effect at the time the improvements with respect to which a tax credit is claimed are placed in service.

(ii) All appliances and any heating, cooling and water heating equipment used in the tenant space and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to paragraph one of subdivision (e) of this section shall meet the standards established by such regulations or, in the event that such standards are revised, the standards in effect at the time the improvements with respect to which a tax credit is claimed are placed in service.

(B) Code requirements, indoor air quality, building materials, finishes and furnishings. (i) The tenant space shall comply with all applicable building code requirements and environmental regulations and, with respect to projects other than new construction, all existing environmental hazards shall be identified and managed in accordance with applicable laws, regulations and industry guidelines.

(ii) In the case of buildings classified B2, B3, B4, C1, C2, C5, or C6, for purposes of the New York state uniform fire prevention and building code, or similarly classified under any subsequent code, ventilation and exchange of indoor/outdoor air shall meet the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section.

(iii) For buildings in which smoking is permitted, the taxpayer shall ensure that, if smoking is permitted in the tenant space, it is permitted only in areas in which the air ventilation and circulation is separate from that for non-smoking areas.

(iv) During construction or rehabilitation, the ventilation system components and pathways shall be protected from contamination in accordance with an indoor air quality management plan for the construction or rehabilitation process that meets the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section. In the event that such areas are not protected from contamination in accordance with such standards, they shall be cleaned prior to occupancy.

(v) A licensed engineer, certified industrial hygienist, or other licensed or certified professional whom the commissioner of environmental conservation shall approve, pursuant to regulations, shall conduct indoor air quality testing with respect to the tenant space immediately following occupancy, if any, and on an annual basis, to monitor supply and return air and ambient air for carbon monoxide, carbon dioxide, total volatile organic compounds, radon, and particulate matter. Provided, however, once radon measurements have been found to be satisfactory, subsequent annual testing is not required. The taxpayer shall record baseline readings immediately following occupancy, if any, and annually thereafter. In the event that the taxpayer does not establish that during a taxable year during which the tenant space is occupied, indoor air quality met the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section, the tenant space shall not constitute green tenant space.

(vi) All plumbing fixtures in the tenant space shall meet the plumbing fixture requirements of the energy policy act of 1992 or successor provision in effect at the time the improvements with respect to which a tax credit is claimed are placed in service.

(vii) All building materials, finishes and furnishings selected for use in the tenant space and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to subparagraph (A) of paragraph three of subdivision (e) of this section, shall meet the standards established by such regulations or, in the event that such standards are revised, the standards in effect at the time the improvements with respect to which a tax credit is claimed are placed in service, provided that, with respect to furnishings, this requirement shall apply only to newly purchased items.

(12) "Incremental cost of building-integrated photovoltaic modules" means:

(A) the cost of building-integrated photovoltaic modules and any associated inverter, additional wiring or other electrical equipment or additional mounting or structural materials, less the cost of spandrel glass or other building material that would have been used in the event that building-integrated photovoltaic modules were not installed,

(B) incremental labor costs properly allocable to on-site preparation,

assembly and original installation of photovoltaic modules, and

(C) incremental architectural and engineering services and designs and plans directly related to the construction or installation of photovoltaic modules.

(13) "NYSERDA" means the New York state energy research and development authority.

(14) "Qualifying alternate energy sources" means building-integrated and non-building-integrated photovoltaic modules and fuel cells installed to serve the base building or tenant space which have the capability to monitor their AC output, and which are validated upon installation, and annually thereafter, to ensure that such systems meet their design specifications.

(15) "Tenant improvements" means improvements which are necessary or appropriate to support or conduct the business of a tenant or occupying owner.

(16) "Tenant space" means the portion of a building intended for occupancy by a tenant or occupying owner.

(c) Certifications. (1) Initial credit component certificate. Upon application by a taxpayer, DEC shall issue an initial credit component certificate where the taxpayer has made a showing that the taxpayer is likely within a reasonable time to place in service property which would warrant the allowance of a credit under this section. Such certificate shall state the first taxable year for which the credit may be claimed and an expiration date, and shall apply only to property placed in service by such expiration date. Such expiration date may be extended at the discretion of DEC, in order to avoid unwarranted hardship. Such certificates shall state the maximum amount of credit component allowable for each of the five taxable years for which the credit component is allowed, under paragraphs two through seven of subdivision (a) of this section.

(a) Period one. Initial credit component certificates for period one may be issued in years 2000-2004. Such certificates for period one shall not be issued, in the aggregate, for more than twenty-five million dollars worth of credit components. In addition, such certificates for period one shall be limited in their applicability, as follows:

Credit components in the aggregate	With respect to taxable
shall not be allowed for more than:	years beginning in:

\$ 1 million	2001
\$ 2 million	2002
\$ 3 million	2003
\$ 4 million	2004
\$ 5 million	2005
\$ 4 million	2006
\$ 3 million	2007
\$ 2 million	2008
\$ 1 million	2009

Provided, however, that if as of the end of a calendar year, certificates for credit component amounts totalling less than the amount permitted with respect to taxable years commencing in such calendar year have been issued, then the amount permitted with respect to taxable years commencing in the subsequent calendar year shall be augmented by the amount of such shortfall.

(b) Period two. Initial credit component certificates for period two may be issued in years 2005-2009. Such certificates for period two shall not be issued, in the aggregate, for more than twenty-five million dollars worth of credit components. The total amount of credit component allowable for the five taxable years for which the credit components are allowed, as set forth on any one initial credit component certificate, shall be limited to two million dollars. However, a taxpayer that is the owner or tenant of more than one building that qualifies for the credits provided for under this section may be issued initial credit component certificates with respect to each such building with the aggregate amount of credit components permitted for each such certificate being two million dollars. Provided further, a taxpayer that is the owner or tenant of a building for which an initial credit component certificate was issued for period one, shall not be issued an initial credit component certificate with respect to such building for period two. In addition, such certificates for period two shall be limited in their applicability, as follows:

Credit components in the aggregate shall not be allowed for more than:	With respect to taxable years beginning in:
\$ 1 million	2006
\$ 2 million	2007
\$ 3 million	2008

\$ 4 million	2009
\$ 5 million	2010
\$ 4 million	2011
\$ 3 million	2012
\$ 2 million	2013
\$ 1 million	2014

Provided, however, that if as of the end of a calendar year, certificates for credit component amounts totaling less than the amount permitted with respect to taxable years commencing in such calendar year have been issued, then the amount permitted with respect to taxable years commencing in the subsequent calendar year shall be augmented by the amount of such shortfall. Provided, further, that if at the end of calendar year two thousand nine, certificates for credit component amounts issued by the DEC have totaled less than twenty-five million dollars for calendar years 2005-2009, then the period to issue initial credit component certificates shall be extended to the end of calendar year two thousand ten and the DEC shall be permitted to issue in two thousand ten initial credit component certificates for amounts that equal the difference between the amounts issued for calendar years 2005-2009 and twenty-five million dollars.

(c) For purposes of either period one or two, if a taxpayer who is issued an initial credit component certificate is unable to claim as a credit any amount of credit component (i) such amount of unclaimed credit component may be allocated to another taxpayer that has already been issued an initial credit component certificate with such certificate being reissued to reflect the amount so allocated, provided that such other taxpayer applied for and would have qualified for such additional amount, and with respect to period two the initial credit component certificate of such other taxpayer as augmented does not exceed the two million dollar limit, or as an alternative (ii) the DEC may issue to other applicants new initial credit component certificates which include such amounts of unclaimed credit components. If a taxpayer is unable to claim all or a portion of the amount of credit components after the close of the last calendar year for which initial credit component certificates may be issued, the DEC shall have twelve months to accept applications for and issue initial credit component certificates for such amount of unclaimed credit components.

(2) Eligibility certificate. For each taxable year for which a taxpayer claims a credit under this section with respect to a green building, green base building or green tenant space, a fuel cell, or photovoltaic modules, or air conditioning equipment using an EPA-approved non-ozone depleting refrigerant or other EPA-approved refrigerant approved by the commissioner of environmental conservation, the taxpayer shall obtain from an architect or professional engineer licensed to practice in this state an eligibility certificate. Such certificate shall consist of a certification, under the seal of such architect or engineer, that the building, base building or tenant space with respect to which the credit is claimed is a green building, green base building or green tenant space, respectively, that the fuel cell or photovoltaic modules constitute qualifying alternate energy sources and that the air conditioning equipment uses an EPA-approved non-ozone depleting refrigerant or other EPA-approved refrigerant approved by the commissioner of environmental conservation and remains in service. Such certification shall be made in accordance with the standards and guidelines in effect at the time the property which is the basis for the credit was placed in service. Such certification shall set forth the specific findings upon which the certification was based. The taxpayer shall file such certificate, and the associated initial credit component certificate, with the claim for credit and shall file duplicate copies with DEC. Such certificate shall include sufficient information to identify each building or space, and such other information as DEC and the commissioner shall prescribe.

(3) Wrongful certification. If DEC has reason to believe that an architect or professional engineer, in making any certification under this subdivision, engaged in professional misconduct, then DEC shall so inform the education department.

(d) Other requirements; miscellaneous. (1) Record keeping. Each taxpayer shall, for any taxable year for which the green building credit provided for under this section is claimed, maintain records of the following information:

(A) annual energy consumption for building, base building or tenant space;

(B) annual results of air monitoring;

(C) annual confirmation that the building, base building or tenant

space continues to meet requirements regarding smoking areas, if provided;

(D) tenant guidelines referred to in subparagraph (I) of paragraph nine of subdivision (b) of this section, if applicable;

(E) all written notification of tenants and requests to remedy any indoor air quality problems;

(F) initial and annual (by month) results of validation of performance of photovoltaic modules and fuel cells; and

(G) certifications as to off-gassing and other contamination, as prescribed in subclause (III) of clause (ii) of subparagraph (B) of paragraph nine of subdivision (b) of this section, where applicable.

(2) Reporting to DEC. Each taxpayer shall also provide to DEC the information described in paragraph one of this subdivision, in the form and at the time prescribed by DEC, such time to be determined in consultation with the commissioner. Such information shall be provided to DEC with respect to each taxable year with respect to which the taxpayer claims a credit under this section.

(3) Regulations. The commissioner, the commissioner of environmental conservation and the commissioner of education are hereby authorized to promulgate and adopt regulations necessary to the implementation of this section. Such regulations shall construe the provisions of this section in such a manner as to encourage the development of green buildings, green base buildings and green tenant space and to maintain high but commercially reasonable standards for obtaining tax credits hereunder. Such regulations shall establish a reasonable time or period of time for submission of applications, and shall establish a method for allocating initial credit component certificates among eligible applicants. Regulations, standards or requirements adopted pursuant to this section shall apply only to a "green base building" as defined in paragraph nine of subdivision (b) of this section, a "green building" as defined in paragraph ten of subdivision (b) or "green tenant space" as defined in paragraph eleven of subdivision (b) of this section.

(4) Report. For period one, on or before April first, two thousand eleven, the commissioner and the commissioner of DEC, jointly and in consultation with NYSERDA, shall submit a written report regarding the number of certifications and taxpayers claiming the credit provided for under this section; the amount of the credits claimed, the geographical

distribution of the credits claimed; and any other such available information DEC may deem meaningful and appropriate. A preliminary version of such report for period one shall be so issued by April first, two thousand five. For period two, on or before April first, two thousand sixteen the commissioner and the commissioner of DEC, jointly and in consultation with NYSERDA, shall submit a written report regarding the number of certificates and taxpayers claiming the credit provided for under this section; the amount of the credits claimed, the geographical distribution of the credits claimed; and any other such available information DEC may deem meaningful and appropriate. A preliminary version of such report for period two shall be issued by April first, two thousand ten. The commissioner and the commissioner of DEC shall ensure that the information is presented and/or classified in a manner consistent with the secrecy requirements of this chapter. DEC shall also make recommendations regarding the establishment of a permanent green building tax credit program. Recommendations may include methods to enhance the effectiveness, simplicity or other aspects of the program. The report shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

(e) Standards and regulations. (1) Energy standards: base buildings. Within six months of the effective date of this section, DEC, in consultation with NYSERDA, shall promulgate the following, with respect to base buildings:

(A) regulations establishing standards for energy use for eligible buildings. DEC, in consultation with NYSERDA shall review and update such regulations if deemed necessary at least every two years from the date on which such regulations are promulgated.

(B) regulations establishing standards for appliances and heating, cooling and water heating equipment that, on the effective date of this section, are covered by specifications from organizations such as the United States department of energy or environmental protection agency. The development of such regulations shall be informed by such specifications. DEC, in consultation with NYSERDA shall review and update such regulations if deemed necessary at least every two years from the date on which such regulations are promulgated.

(C) regulations indicating the methodology by which a taxpayer shall demonstrate compliance with subparagraph (A) of paragraph nine of subdivision (b) of this section. Such regulations shall include, at a minimum, a requirement to conduct hourly computer modeling for one full year.

(D) regulations establishing standards for the commissioning of buildings.

(2) Indoor air standards: base buildings. Within six months of the effective date of this section, DEC, in consultation with DOH and NYSERDA, shall promulgate regulations establishing standards, with respect to base buildings, for (A) ventilation and exchange of indoor/outdoor air, (B) indoor air quality management plans for the construction or rehabilitation process, and (C) indoor air quality with respect to levels of carbon monoxide, carbon dioxide and total volatile organic compounds, radon and particulate matter.

(3) Standards for materials, water conservation, drainage: base buildings. Within one year of the effective date of this section, DEC, in consultation with NYSERDA, shall promulgate the following, with regard to base buildings:

(A) regulations establishing standards for building materials, finishes and furnishings regarding minimum percentages of recycled content and renewable source material and maximum levels of toxicity and volatile organic compounds and any other standards that the DEC deems appropriate. Standards shall be developed for building materials, finishes and furnishings, including but not limited to concrete and concrete masonry units; wood and wood products; millwork substrates; insulation; ceramic, ceramic/glass and cementitious tiles; ceiling tiles and panels; flooring and carpet; paints, coatings, sealants and adhesives; and furniture. The development of such standards shall be informed by the LEED rating system. The DEC shall review and update such regulations if deemed necessary at least every two years from the date on which such regulations are promulgated. For purposes of this clause, "LEED rating system" means the leadership in energy and environmental design green building rating system criteria being developed by the United States green building council.

(B) regulations establishing standards for buildings located in areas where water use is not metered, which regulations shall require, at a

minimum, that the building include one of the following features:

(i) a gray water system that recovers non-sewage waste water or uses roof or ground storm water collection systems, or recovers ground water from sump pumps;

(ii) for buildings with a cooling tower system, such system shall be designed with delimiters to reduce drift and evaporation; or

(iii) for buildings with exterior plants, all such plants shall be tolerant of climate, soils and natural water availability and shall not receive watering from municipal potable water after a period of establishment is complete.

(C) regulations establishing standards for buildings located in areas that do not have sewers or that have designated storm sewers, which regulations shall require, at a minimum, that the building shall include one of the following features:

(i) an oil grit separator or water quality pond for pretreatment of runoff from any surface parking areas; or

(ii) at least fifty percent of nonlandscaped areas (including roadways, surface parking, plazas and pathways), if any, shall be comprised of pervious paving materials.

(D) regulations indicating the methodology by which taxpayers shall demonstrate compliance with subparagraphs (B) and (C) of paragraph nine of subdivision (b) of this section.

(4) Energy standards: tenant space. Within six months of the effective date of this section, DEC, in consultation with NYSERDA, shall promulgate regulations, with respect to tenant space, indicating the methodology by which taxpayers shall demonstrate compliance with subparagraph (A) of paragraph eleven of subdivision (b) of this section.

(5) Standards for indoor air quality, building materials, finishes and furnishings: tenant space. Within one year of the effective date of this section, DEC, in consultation with DOH and NYSERDA, shall promulgate regulations, with respect to tenant space, indicating the methodology by which taxpayers shall demonstrate compliance with subparagraph (B) of paragraph eleven of subdivision (b) of this section.

(f) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article nine: Section one hundred eighty-seven-d;

(2) Article nine-A: Subdivision sixteen of section two hundred ten-B;

(3) Article twenty-two: Subsections (i) and (y) of section six hundred six;

(4) Article thirty-three: Subdivision (o) of section fifteen hundred eleven.

§ 20. Credit for transportation improvement contributions. (a)

Allowance of credit. For taxable years beginning before January first, two thousand nine, a taxpayer subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (d) of this section. The credit shall be allowed where a taxpayer has made a certified contribution of at least ten million dollars to a qualified transportation improvement project in a prior taxable year. The credit shall be equal to six percent of the taxpayer's increased qualified business facility payroll for the taxable year. The aggregate of all credit amounts allowed to the taxpayer pursuant to this section with respect to a certified contribution shall not exceed the amount of such certified contribution.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) Qualified business facility ("QBF"). A business facility the construction or expansion of which is intended to be enhanced by a qualified transportation improvement project, as described in paragraph three of this subdivision.

(2) Certified contribution. The term "certified contribution" means a contribution certified jointly by the commissioner of transportation and the commissioner of economic development as a contribution to a qualified transportation improvement project, such certification indicating the date and amount of such contribution by the taxpayer, and including a description of the associated QBF. The commissioner of transportation and the comptroller are authorized to accept, hold and, notwithstanding section four of the state finance law, to disburse such contributions, in the same manner as is authorized for municipal contributions in section ten of the highway law.

(3) Qualified transportation improvement project. The term "qualified transportation improvement project" means the design, development,

construction, and/or improvement of transportation infrastructure and related facilities or systems, including, but not limited to, highways, roadways, bridges, ramps or lanes; or railroad, port, aviation or mass transit facilities; or ferry or marine facilities; or associated right-of-way and associated connections to existing or planned transportation infrastructure or facilities. Such project must be designed in part to enhance the planned construction or expansion of a QBF. A project for the design, development, construction, and/or improvement of transportation infrastructure and related facilities or systems shall be considered a "qualified transportation improvement project" under this section only if the commissioner of transportation and the commissioner of economic development jointly determine, in their sole discretion, that the project would promote the development of employment opportunities in connection with such QBF by creating more than one thousand new jobs in connection therewith, and is in the best interests of the people of the state. The undertaking of said project is declared to be for a public purpose, and the commissioner of transportation is authorized to participate in the costs thereof.

(4) Increased QBF payroll. The term "increased QBF payroll" means the excess, if any, of (A) the taxpayer's total wages, salaries and other personal service compensation of employees employed in connection with a QBF other than general executive officers (in the case of a corporation), for the taxable year, over (B) the average of the taxpayer's total wages, salaries and other personal service compensation of such employees for the taxable year in which the contribution was made and for the two immediately preceding taxable years, if any, but only to the extent that such excess exists with regard to the state.

(c) Recapture. (1) If the taxpayer has made a contribution which is the basis for a credit allowed under this section, and if with respect to the third full taxable year (the "test year") next following the taxable year during which such contribution was made (the "contribution year") the employment increase test described in paragraph three of this subdivision is not met, the taxpayer shall add back the sum of the amounts of such credit which have been allowed for all prior taxable years, and shall be allowed no further credit under this section with respect to such contribution with respect to any other taxable year.

(2) The amount required to be added back pursuant to this subdivision

shall be augmented by an amount equal to the product of such amount and the underpayment rate of interest (without regard to compounding), set by the commissioner pursuant to subsection (e) of section one thousand ninety-six of this chapter, in the case of taxpayers which applied the credit against tax under article nine, nine-A, thirty-two or thirty-three, or pursuant to subsection (j) of section six hundred ninety-seven of this chapter, in the case of taxpayers who applied the credit against tax under article twenty-two of this chapter, in effect on the last day of the taxable year.

(3) The employment increase test shall be deemed met where the average number of full-time employees of the taxpayer employed (A) in connection with a QBF and (B) in this state, during the test year, exceeds, in each case, such number determined with respect to the contribution year and the two immediately preceding taxable years by one thousand.

(4) The average number of employees in a taxable year shall be computed by ascertaining the number of employees, except general executive officers (in the case of a corporation), employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in the taxable year, by adding together the number of employees ascertained on each of such dates and dividing the sum so obtained by the number of such abovementioned dates occurring within the taxable year.

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) Article 9: Section 187-e,
- (2) Article 9-A: Section 210: subdivision 32,
- (3) Article 22: Section 606: subsections (i) and (z),
- (4) Article 32: Section 1456: subsection (n),
- (5) Article 33: Section 1511: subdivision (p).

*** § 21. Brownfield redevelopment tax credit.** (a) Allowance of credit.

(1) General. A taxpayer subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. Such credit shall be allowed with respect to a qualified site, as such term is defined in paragraph one of subdivision

(b) of this section. The amount of the credit in a taxable year shall be the sum of the credit components specified in paragraphs two, three and four of this subdivision applicable in such year.

(2) Site preparation credit component. The site preparation credit component shall be equal to the applicable percentage of the site preparation costs paid or incurred by the taxpayer with respect to a qualified site. The credit component amount so determined with respect to a site's qualification for a certificate of completion shall be allowed for the taxable year in which the effective date of the certificate of completion occurs. The credit component amount determined other than with respect to such qualification shall be allowed for the taxable year in which the improvement to which the applicable costs apply is placed in service for up to five taxable years after the issuance of such certificate of completion; provided, however, that for any qualified site to which a certificate of completion is issued on or after July first, two thousand fifteen but on or before June twenty-fourth, two thousand twenty-one, the site preparation credit component for such costs shall be allowed for up to seven taxable years after the issuance of such certificate of completion; and provided further, however, that for any qualified site located in cities with a population greater than two hundred five thousand and less than two hundred fifteen thousand in counties with a population greater than one million but less than one million ten thousand based on the latest federal decennial census for which the department of environmental conservation has issued a certificate of completion to the taxpayer on or after January first, two thousand seventeen and before December thirty-first, two thousand seventeen, the site preparation credit component for such costs shall be allowed for up to fifteen taxable years after the issuance of such certificate of completion.

(3) Tangible property credit component.

(i) The tangible property credit component shall be equal to the applicable percentage of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property and may include any related party service fee paid; provided that in determining the cost or other basis of such property, the taxpayer shall exclude the acquisition cost of any

item of property with respect to which a credit under this section was allowable to another taxpayer; and provided further that for the purposes of this section, starting with taxable year two thousand twenty-two, on sites that comply with the track one remediation standards promulgated pursuant to subdivision four of section 27-1415 of the environmental conservation law, stadiums, baseball parks, basketball courts and other athletic facilities shall be considered buildings, and that components of stadiums, baseball parks, basketball courts, and other athletic facilities constructed on such sites, including sports field turf, site lighting, sidewalks, access and entry ways, and other improvements added to land, shall be considered structural components of buildings under the internal revenue code, and shall be included in the definition of tangible property for the purposes of this section. A related party service fee shall be allowed only in the calculation of the tangible property credit component and shall not be allowed in the calculation of the site preparation credit component or the on-site groundwater remediation credit component. The portion of the tangible property credit component which is attributable to related party service fees shall be allowed only as follows: (A) in the taxable year in which the qualified tangible property described in subparagraph (iii) of this paragraph is placed in service, for that portion of the related party service fees which have been earned and actually paid to the related party on or before the last day of such taxable year; and (B) with respect to any other taxable year for which the tangible property credit component may be claimed under this subparagraph and in which the amount of any additional related party service fees are actually paid by the taxpayer to the related party, the tangible property credit component for such amount shall be allowed in such taxable year. The credit component amount so determined shall be allowed for the taxable year in which such qualified tangible property is first placed in service on a qualified site with respect to which a certificate of completion has been issued to the taxpayer, or for the taxable year in which the certificate of completion is issued if the qualified tangible property is placed in service prior to the issuance of the certificate of completion. This credit component shall only be allowed for up to one hundred twenty months after the date of the issuance of such certificate of completion, provided, however, that for qualified sites to which a

certificate of completion is issued on or after March twentieth, two thousand ten, but prior to January first, two thousand twelve, the commissioner may extend the credit component for up to one hundred forty-four months after the date of such issuance, if the commissioner, in consultation with the commissioner of environmental conservation, determines that the requirements for the credit would have been met if not for the restrictions related to the state disaster emergency declared pursuant to executive order 202 of 2020 or any extension thereof or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic; provided, however, with respect to any qualified site for which the department of environmental conservation has issued a certificate of completion to the taxpayer on or after March twentieth, two thousand ten and before December thirty-first, two thousand fifteen, this credit component shall be allowed for up to one hundred eighty months after the date of the issuance of such certificate of completion; and provided further, with respect to any qualified site located in cities with a population greater than two hundred five thousand and less than two hundred fifteen thousand in counties with a population greater than one million but less than one million ten thousand based on the latest federal decennial census for which the department of environmental conservation has issued a certificate of completion to the taxpayer on or after January first, two thousand seventeen and before December thirty-first, two thousand seventeen, this credit component shall be allowed for up to one hundred eighty months after the date of the issuance of such certificate of completion.

(ii) The tangible property credit component shall be allowed with respect to property leased to a second party only if such second party is either (A) not a party responsible for the disposal of hazardous waste or the discharge of petroleum at the site according to applicable principles of statutory or common law liability, or (B) a party responsible according to applicable principles of statutory or common law liability if such party's liability arises solely from operation of the site subsequent to the disposal of hazardous waste or the discharge of petroleum, and is so certified by the commissioner of environmental conservation at the request of the taxpayer, pursuant to section 27-1419 of the environmental conservation law. Notwithstanding any other provision of law to the contrary, in the case of allowance of credit

under this section to such a lessor, the commissioner shall have the authority to reveal to such lessor any information, with respect to the issue of qualified use of property by the lessee, which is the basis for the denial in whole or in part, or for the recapture, of the credit claimed by such lessor. For purposes of the tangible property credit component allowed under this section the taxpayer to whom the certificate of completion is issued, as provided for under subdivision five of section 27-1419 of the environmental conservation law, may transfer the benefits and burdens of the certificate of completion, which run with the land and to the applicant's successors or assigns upon transfer or sale of all or any portion of an interest or estate in the qualified site. However, the taxpayer to whom certificate's benefits and burdens are transferred shall not include the cost of acquiring all or any portion of an interest or estate in the site and the amounts included in the cost or other basis for federal income tax purposes of qualified tangible property already claimed by the previous taxpayer pursuant to this section.

(iii) The term "related party service fee" shall mean any fee or other monetary compensation earned by a related party and calculated as a percentage of project and/or acquisition costs, in consideration of services rendered to or for the benefit of the taxpayer placing qualified tangible property in service in connection with the acquisition and development of such property. For purposes of this subparagraph, "related party" shall have the same meaning as related person as defined in subparagraph (c) of paragraph three of subdivision (b) of section four hundred sixty-five of the internal revenue code.

(iv) Eligible costs for the tangible property credit component are limited to costs for tangible property that has a depreciable life for federal income tax purposes of fifteen years or more, costs associated with demolition and excavation on the site and the foundation of any buildings constructed as part of the site cover that are not properly included in the site preparation component and costs associated with non-portable equipment, machinery and associated fixtures and appurtenances used exclusively on the site, whether or not such property has a depreciable life for federal income tax purposes of fifteen years or more.

(v) With respect to any qualified site for which the department of

environmental conservation has issued a notice to the taxpayer on or after July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, and the site is eligible for the tangible property credit component because it is an affordable housing project pursuant to subdivision one-a of section 27-1407 of the environmental conservation law, the portion of eligible costs to be included in the calculation of the tangible property credit component will be determined by multiplying the total costs qualified for the tangible property credit component by a fraction, the numerator of which shall be the square footage of space of the affordable housing units dedicated to residential occupancy and the denominator of which shall be the total square footage of the building.

(3-a) (A) Notwithstanding any other provision of law to the contrary, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed thirty-five million dollars or three times the sum of the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, and the costs that would have been included in the calculation of such components if not treated as an expense and deducted pursuant to section one hundred ninety-eight of the internal revenue code, whichever is less; provided, however, that: (1) in the case of a qualified site to be used primarily for manufacturing activities, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed forty-five million dollars or six times the sum of the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, and the costs that would have been included in the calculation of such components if not treated as an expense and deducted pursuant to section one hundred ninety-eight of the internal revenue code, whichever is less; and (2) the provisions of this paragraph shall

not apply to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law.

(B) For the purposes of this paragraph, the term "manufacturing activities" means the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing; provided however, that the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity, shall not constitute manufacturing activities.

(C) In order to properly administer the credits set forth in this subdivision, the department may disclose information about the calculation and the amounts of the credits claimed under this subdivision on a taxpayer's return to the department of environmental conservation and other taxpayers claiming tax credits under this section with respect to the same qualifying site.

(D) With respect to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, or where the taxpayer has either been issued or received a certificate of completion from another taxpayer under section 27-1419 of the environmental conservation law before July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, if the qualifying site is located in a brownfield opportunity area and is developed in conformance with the goals and priorities established for that applicable brownfield opportunity area as designated pursuant to section nine hundred seventy-r of the general municipal law, the applicable percentage of the

tangible property credit component will be increased by two percent.

(4) On-site groundwater remediation credit component. The on-site groundwater remediation credit component shall be equal to the applicable percentage of the on-site groundwater remediation costs paid or incurred by the taxpayer with respect to a qualified site (to the extent that such groundwater remediation costs are not included in the determination of the site preparation credit or the cost or other basis included in the determination of the tangible property credit). The credit component so determined for costs incurred and paid with respect to and prior to the issuance of a certificate of completion shall be allowed for the taxable year in which the effective date of the issuance of a certificate of completion occurs. The credit component amount determined in taxable years after the effective date of the issuance of a certificate of completion shall be allowed in the taxable year such qualified costs are incurred and paid for up to five taxable years after the issuance of such certificate of completion; provided, however, that with respect to any qualified site for which a certificate of completion has been issued on or after July first, two thousand fifteen but on or before June twenty-fourth, two thousand twenty-one, the credit component amount determined in taxable years after the effective date of the issuance of a certificate of completion shall be allowed in the taxable year such qualified costs are incurred and paid for up to seven taxable years after the issuance of such certificate of completion.

(5) Applicable percentage. (A) For purposes of computing the site preparation and on-site groundwater remediation credit components pursuant to paragraphs two and four of this subdivision, with respect to such qualified sites for which the department of environmental conservation has issued a notice to the taxpayer before June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, or where the taxpayer has either been issued or received a certificate of completion from another taxpayer under section 27-1419 of the environmental conservation law for such a site, and, for purposes of computing the tangible property component pursuant to paragraph three of this subdivision with respect to such qualified sites for which the department of environmental conservation has issued a notice to the taxpayer before July first, two thousand

fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, or where the taxpayer has either been issued or received a certificate of completion from another taxpayer under section 27-1419 of the environmental conservation law for such a site, the applicable percentage shall be twelve percent in the case of credits claimed under article nine, nine-A or thirty-three of this chapter, and ten percent in the case of credits claimed under article twenty-two of this chapter, except that where at least fifty percent of the area of the qualified site relating to the credit provided for in this section is located in an environmental zone as defined in paragraph six of subdivision (b) of this section, the applicable percentage shall be increased by an additional eight percent. Provided, however, as afforded in section 27-1419 of the environmental conservation law, if the certificate of completion indicates that the qualified site has been remediated to Track 1 as that term is described in subdivision four of section 27-1415 of the environmental conservation law, the applicable percentage set forth in the first sentence of this paragraph shall be increased by an additional two percent.

(B) With respect to such qualified site for which the department of environmental conservation has issued a notice to the taxpayer on or after July first, two thousand fifteen, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, the applicable percentage for the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of this subdivision shall be the sum of ten percent and the following additional percentages, provided that if the sum is greater than twenty-four percent, the total percentage of the tangible property credit component shall be twenty-four percent and is otherwise subject to the limitations set forth in paragraphs three and three-a of this subdivision:

(i) five percent for a site which:

(1) is located within an environmental zone; or

(2) is in a disadvantaged community as that term is defined in section

27-1405 of the environmental conservation law for which the department of environmental conservation has issued a notice to the taxpayer on or after January first, two thousand twenty-three that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law;

(ii) five percent for a site located within a designated brownfield opportunity area and is developed in conformance with the goals and priorities established for that applicable brownfield opportunity area and meets the conformance determinations pursuant to subdivision ten of section nine hundred seventy-r of the general municipal law;

(iii) five percent for a site developed as affordable housing, as defined in section 27-1405 of the environmental conservation law;

(iv) five percent for a site to be used primarily for manufacturing activities as such term is defined in subparagraph (B) of paragraph three-a of this subdivision;

(v) five percent for sites remediated to Track 1 as that term is defined in subdivision four of section 27-1415 of the environmental conservation law; and

(vi) for a qualified site for which the department of environmental conservation has issued a notice to the taxpayer on or after January first, two thousand twenty-three that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, five percent for sites developed as renewable energy facility sites as defined in section 27-1405 of the environmental conservation law.

(C) The taxpayer shall submit, in the manner prescribed by the commissioner, information sufficient to demonstrate that the site qualifies for any credit components available under subparagraph (B) of this paragraph. If the site is receiving the credit component authorized pursuant to clause (ii) of subparagraph (B) of this paragraph for being located within a designated brownfield opportunity area, the taxpayer shall submit a certification from the secretary of state that the development is in conformance with such brownfield opportunity area plan pursuant to section nine hundred seventy-r of the general municipal law.

(6) Site preparation costs and on-site groundwater remediation costs paid or incurred by the taxpayer with respect to a qualified site and the cost or other basis for federal income tax purposes of tangible

personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property shall only include costs paid or incurred by the taxpayer on or after the date of the brownfield site cleanup agreement executed by the taxpayer and the department of environmental conservation pursuant to section 27-1409 of the environmental conservation law.

(7) The amount of any grant received from the federal, state or a local government or an instrumentality or public benefit corporation thereof received by the taxpayer and used to pay for any of the costs described in paragraphs two, three and four of this subdivision, which was not included in the federal gross income of the taxpayer, shall be subtracted in computing the credit components under this section.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) Qualified site. A "qualified site" is a site with respect to which a certificate of completion has been issued to the taxpayer by the commissioner of environmental conservation pursuant to section 27-1419 of the environmental conservation law.

(2) Site preparation costs. The term "site preparation costs" shall mean all amounts properly chargeable to a capital account, which are paid or incurred which are necessary to implement a site's investigation, remediation, or qualification for a certificate of completion, and shall include costs of: excavation; demolition; activities undertaken under the oversight of the department of labor or in accordance with standards established by the department of health to remediate and dispose of regulated materials including asbestos, lead or polychlorinated biphenyls; environmental consulting; engineering; legal costs; transportation, disposal, treatment or containment of contaminated soil; remediation measures taken to address contaminated soil vapor; cover systems consistent with applicable regulations; physical support of excavation; dewatering and other work to facilitate or enable remediation activities; sheeting, shoring, and other engineering controls required to prevent off-site migration of contamination from the qualified site or migrating onto the qualified site; and the costs of fencing, temporary electric wiring, scaffolding, and security facilities until such time as the certificate of completion has been issued. Site preparation shall include all costs paid or

incurred within sixty months after the last day of the tax year in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the remedial program defined in such certificate of completion including but not limited to institutional controls, engineering controls, an approved site management plan, and an environmental easement with respect to the qualified site; provided, however, with respect to any qualified site for which a certificate of completion was issued on or after July first, two thousand fifteen but on or before June twenty-fourth, two thousand twenty-one, site preparation shall include all costs paid or incurred within eighty-four months after the last day of the tax year in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the remedial program defined in such certificate of completion including but not limited to institutional controls, engineering controls, an approved site management plan, and an environmental easement with respect to the qualified site, provided, however, with respect to any qualified site located in cities with a population greater than two hundred five thousand and less than two hundred fifteen thousand in counties with a population greater than one million but less than one million ten thousand based on the latest federal decennial census for which the department of environmental conservation has issued a certificate of completion to the taxpayer on or after January first, two thousand seventeen and before December thirty-first, two thousand seventeen, this credit component shall be allowed for up to one hundred eighty months after the date of the issuance of such certificate of completion. Site preparation cost shall not include the costs of foundation systems that exceed the cover system requirements in the regulations applicable to the qualified site.

(3) Qualified tangible property. "Qualified tangible property" is property described in either subparagraph (A) or (B) of this paragraph which:

- (A) (i) is depreciable pursuant to section one hundred sixty-seven of the internal revenue code,
- (ii) has a useful life of four years or more,
- (iii) has been acquired by purchase as defined in section one hundred

seventy-nine (d) of the internal revenue code,

(iv) has a situs on a qualified site in this state, and

(v) is principally used by the taxpayer for industrial, commercial, recreational or environmental conservation purposes (including the commercial development of residential housing); or

(B) (i) is, or when occupied becomes, part of a dwelling whose primary ownership structure is covered under either article nine-B of the real property law or meets the requirements of section 216 (b)(1) of the Internal Revenue Code or is part of an affordable housing project as defined in subdivision twenty-nine of section 27-1405 of the environmental conservation law, where units are sold as single family homes or multiple family dwellings;

(ii) has been acquired by purchase (as defined in section one hundred seventy-nine (d) of the Internal Revenue Code);

(iii) has a situs on a qualified site in this state; and

(iv) for purposes of this subparagraph only, and notwithstanding any other section of law to the contrary, property qualifying under this subparagraph shall be deemed to be qualified tangible property for the purposes of paragraph one of subdivision (d) of this section; and in addition, for the purposes of this subdivision only, property qualifying under this subparagraph shall be deemed to have been placed in service for the purposes of paragraph three of subdivision (a) of this section when a certificate of occupancy is issued for such property.

(4) On-site groundwater remediation costs. The term "on-site groundwater remediation costs" shall mean all amounts properly chargeable to a capital account, which are paid or incurred which are necessary to implement a site's groundwater investigation, remediation, or qualification for a certificate of completion not already covered under site preparation costs, and shall include costs of: environmental consulting; engineering; legal costs; transportation, disposal, treatment or containment of contaminated groundwater; sheeting, shoring, and other engineering controls required to prevent off-site migration of groundwater contamination from the qualified site or migrating onto the qualified site; and the costs of fencing, temporary electric wiring and security facilities until such time as the certificate of completion is issued. On-site groundwater remediation costs shall include all costs paid or incurred within sixty months after the last day of the tax year

in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the groundwater remedial program defined in such certificate of completion including but not limited to institutional controls, engineering controls, an approved site management plan specific to on-site groundwater remediation, and an environmental easement with respect to the qualified site. Provided, however, with respect to any qualified site for which a certificate of completion has been issued on or after July first, two thousand fifteen but on or before June twenty-fourth, two thousand twenty-one, on-site groundwater remediation costs shall include all such costs paid or incurred within eighty-four months after the last day of the tax year in which the certificate of completion is issued.

(5) Certificate of completion. A "certificate of completion" issued by the commissioner of environmental conservation pursuant to section 27-1419 of the environmental conservation law.

(6) Environmental zones (EN-Zones). An "environmental zone" shall mean an area designated as such by the commissioner of labor. Such areas shall be census tracts that satisfy either of the following criteria:

(A) areas that have both:

(i) a poverty rate of at least twenty percent based on the most recent five year American Community Survey; and

(ii) an unemployment rate of at least one and one-quarter times the statewide unemployment rate based on the most recent five year American Community Survey, or;

(B) areas that have a poverty rate of at least two times the poverty rate for the county in which the areas are located based on the most recent five year American Community Survey.

Such designation shall be made and a list of all such environmental zones shall be established by the commissioner of labor based on the two thousand nine through two thousand thirteen American Community Survey estimate. Upon request of the commissioner of environmental conservation, the commissioner of labor shall update such designation based on the most recent American Community Survey, or its successor.

The determination of whether a site is located in an environmental

zone shall be based on the date the department of environmental conservation issued a notice to the taxpayer that its request for participation in the brownfield cleanup program has been deemed complete pursuant to subdivision three of section 27-1407 of the environmental conservation law.

(c) Qualifying property. Property which qualifies for the credit provided for under this section and also for a credit provided for (1) under either subdivision one or subdivision three of section two hundred ten-B of this chapter, or both, or (2) subsection (a) or subsection (j) of section six hundred six of this chapter, or both may be the basis for either the credit provided for under this section or one of the credits enumerated in paragraph one or two of this subdivision, but not both.

(d) Depreciable property. (1) With respect to qualified tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code and which ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year in which the property ceased to be in qualified use. Provided, however, if such property ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this paragraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this paragraph, the useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing its federal income tax liability.

(2) Except with respect to that property to which paragraph four of this subdivision applies, with respect to qualified tangible property which is three-year property, as defined in subsection (e) of section one hundred sixty-eight of the internal revenue code, which ceases to be

in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year in which the property ceased to be in qualified use. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(3) Except with respect to that property to which paragraph four of this subdivision applies, with respect to qualified tangible property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code other than three-year property as defined in subsection (e) of such section one hundred sixty-eight which ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year in which the property ceased to be in qualified use. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(4) With respect to any qualified tangible property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the credit allowed for actual

use must be added back in the year in which the property ceased to be in qualified use. Provided, however, if such property ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this paragraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code.

(e) If the certificate of completion issued to the taxpayer with respect to a qualified site is revoked by a determination issued pursuant to section 27-1419 of the environmental conservation law, the amount of any credit allowed by this section shall be added back in the taxable year in which such determination is final and no longer subject to judicial review.

(f) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) Article 9: Section 187-g
- (2) Article 9-A: Section 210-B, subdivision 17
- (3) Article 22: Section 606, subsections (i) and (dd)
- (4) Article 33: Section 1511, subdivision (u).

* NB There are 2 § 21's

*** § 21. Disclosure of taxpayer information in cases involving abandoned property.** (a) General. Notwithstanding any provision of law to the contrary, the commissioner may furnish to the comptroller or duly designated officer or employee of the state department of audit and control the name, address and taxpayer identification number of a taxpayer to whom a refund or reimbursement of tax is owed, together with the amount of such refund or reimbursement, for the sole purpose of identifying owners of abandoned property paid to and held by the comptroller pursuant to section one hundred two of the state finance law.

(b) Secrecy requirement and penalty for violation. (1) Except in accordance with a proper judicial order or as otherwise provided by law, it shall be unlawful for any person to whom the taxpayer information

described in subdivision (a) of this section is disclosed in accordance with this section to divulge or make known in any manner such taxpayer information for uses not authorized under this section.

(2) (A) Any officer or employee of the state who willfully violates the provisions of this subdivision shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

(B) Cross-reference. For criminal penalties, see article thirty-seven of this chapter.

* NB There are 2 § 21's

§ 22. Tax credit for remediated brownfields. (a) Definitions. As used in this section the following terms shall have the following meanings:

(1) Certificate of completion. A "certificate of completion" issued by the commissioner of environmental conservation pursuant to section 27-1419 of the environmental conservation law.

(2) Qualified site. For purposes of this section, a "qualified site" is a site with respect to which a certificate of completion has been issued by the commissioner of environmental conservation pursuant to section 27-1419 of the environmental conservation law.

(3) Developer. (i) A "developer" is a taxpayer under article nine, nine-A, twenty-two or thirty-three of this chapter who or which either (I) has been issued a certificate of completion with respect to a qualified site or (II) has purchased or in any other way has been conveyed all or any portion of a qualified site from a taxpayer or any other party who or which has been issued a certificate of completion with respect to such site provided, such purchase or conveyance occurs within seven years of the effective date of the certificate of completion issued with respect to such qualified site. Provided further, that the taxpayer who or which is purchasing all or any portion of a qualified site and the taxpayer or any other party who or which has been issued a certificate of completion with respect to such site may not be related persons, as such term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

(ii) Where the entity to whom a certificate of completion has been

issued is a partnership, or where the entity which has purchased all or any portion of a qualified site from a taxpayer who or which has been issued a certificate of completion with respect to such site within the applicable time limit is a partnership, any partner in such partnership who or which is taxable under article nine, nine-A, twenty-two or thirty-three of this chapter shall be a developer under this paragraph. Where the entity to whom a certificate of completion has been issued is a New York S corporation, or where the entity which has purchased all or any portion of a qualified site from a taxpayer who or which has been issued a certificate of completion with respect to such site within the applicable time limit is a New York S corporation, any shareholder in such New York S corporation shall be a developer under this paragraph.

(4) Cessation of status. A taxpayer shall cease to be a developer on the first day of the taxable year during which revocation of its certificate of completion under section 27-1419 of the environmental conservation law is final and no longer subject to judicial review, and the amount of any credit allowed by this section shall be added back in the taxable year in which such determination is final and no longer subject to judicial review.

(5) Environmental zones (EN-Zones). An "environmental zone" shall mean an area designated as such by the commissioner of economic development. Such areas so designated are areas which are census tracts and block numbering areas which, as of the two thousand census, satisfy either of the following criteria:

(A) areas that have both:

(i) a poverty rate of at least twenty percent for the year to which the data relate;

(ii) an unemployment rate of at least one and one-quarter times the statewide unemployment rate for the year to which the data relate, or;

(B) areas that have a poverty rate of at least two times the poverty rate for the county in which the areas are located for the year to which the data relate, provided, however, that a qualified site shall only be deemed to be located in an environmental zone under this subparagraph (B) if such site was the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the environmental conservation law that was entered into prior to September first, two thousand ten.

Such designation shall be made and a list of all such environmental zones shall be established by the commissioner of economic development no later than December thirty-first, two thousand four provided, however, that a qualified site shall only be deemed to be located in an environmental zone under subparagraph (B) of this paragraph if such site was the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the environmental conservation law that was entered into prior to September first, two thousand ten.

(b) Remediated brownfield credit for real property taxes for qualified sites. (1) Allowance of credit. A developer of a qualified site who or which is subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in paragraph nine of this subdivision, for eligible real property taxes imposed on such site.

(2) Amount of credit. The amount of the credit shall be twenty-five percent of the product of (i) the benefit period factor, (ii) the employment number factor, and (iii) the eligible real property taxes paid or incurred by the developer of the qualified site during the taxable year (or the pro rata share of such taxes in the case of a partner in a partnership or a shareholder in a New York S corporation), except that if the real property which is the subject of the credit provided for under this section is attributed to a qualified site located in an environmental zone as defined in paragraph five of subdivision (a) of this section, the amount of the credit shall be the product of the factors and taxes referred to in subparagraphs (i), (ii) and (iii) of this paragraph. However, the amount of the credit may not exceed the credit limitation set forth in paragraph seven of this subdivision.

(3) Benefit period factor. The benefit period factor is a numerical value corresponding with a benefit period of ten consecutive taxable years commencing in the taxpayer's taxable year during which the certificate of completion is issued for the qualified site or the taxpayer's first taxable year commencing on or after April first, two thousand five, whichever is later. The benefit period factors are set forth in the following table:

Taxable year of benefit period:	Benefit period factor:
1-10	1.0

(4) Employment number factor. (i) The employment number factors are set forth in the following table:

Average number of full-time employees employed by the developer of a qualified site, plus the average number of full-time employees employed by a lessee or lessees of a portion of such qualified site, where such employees are employed at such site during the taxable year:	Employment number factor:
At least 25 but less than 50	.25
At least 50 but less than 75	.50
At least 75 but less than 100	.75
At least 100	1.00

(ii) For purposes of this paragraph, the average number of full-time employees, excluding general executive officers, employed by a developer and a lessee at a qualified site during a taxable year or other applicable period, shall be computed by ascertaining the number of such employees employed by the developer and such lessee on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year or other applicable period, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year or other applicable period. Where the developer is a partner in a partnership or a shareholder in a New York S corporation, the number of full-time employees of the partnership or the New York S corporation respectively, at such qualified site, shall be used for purposes of this calculation.

(5) Eligible real property taxes. The term "eligible real property taxes" means taxes imposed on real property which consists of a qualified site owned by the developer, provided such taxes become a lien on the real property in a period during which the real property is a qualified site. In addition, the term "eligible real property taxes" includes payments in lieu of taxes by the developer, with respect to a qualified site, to the state, a municipal corporation or a public

benefit corporation pursuant to a written agreement entered into between the developer and the state, a municipal corporation or a public benefit corporation. Provided, however, such a payment in lieu of taxes shall not constitute eligible real property taxes in any taxable year to the extent that such payment exceeds the product of (A) the greater of (i) the basis for federal income tax purposes, determined on the date the taxpayer becomes a developer as defined under this section, of real property, including buildings and structural components of buildings, owned by the developer and located on a qualified site with respect to which the taxpayer is a developer, or (ii) the basis for federal income tax purposes of such real property described in clause (i) of this subparagraph on the last day of the taxable year, and (B) the estimated effective full value tax rate within the county in which such property is located, as most recently calculated by the commissioner. The commissioner shall annually calculate estimated and effective full value tax rates within each county for this purpose based upon the most current information available to him or her in relation to county, city, town, village and school district taxes. Provided further, where the amount of the credit determined under paragraph two of this subdivision is the total product of the factors and tax specified therein, the term "eligible real property taxes" under this paragraph shall apply only to taxes imposed on real property which is attributed to a qualified site located in an environmental zone. Where the developer is a partner in a partnership or a shareholder in a New York S corporation, such real property shall be owned by the partnership or the New York S corporation, respectively.

(6) Credit recapture. Where a developer's eligible real property taxes which were the basis for the allowance of the credit provided for under this subdivision are subsequently reduced as a result of a final order in any proceeding under article seven of the real property tax law or other provision of law, the taxpayer shall add back, in the taxable year in which such final order is issued, the excess of (i) the amount of credit originally allowed for a taxable year over (ii) the amount of credit determined based upon the reduced eligible real property taxes. If such final order reduces real property taxes for more than one year, the taxpayer must determine how much of such reduction is attributable to each year covered by such final order and calculate the amount of

credit which is required by this paragraph to be recaptured for each year based on such reduction.

(7) Credit limitation. The credit limitation shall be the product of (i) ten thousand dollars and (ii) the average number of full-time employees employed by the developer of a qualified site and a lessee or lessees of a portion of such qualified site during the taxable year, as such average is computed under subparagraph (ii) of paragraph four of this subdivision.

(8) Credit option. If the qualified site is located in whole or in part in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law, and a taxpayer meets the eligibility requirements for both the credit provided for under this section and the QEZE credit for real property taxes provided for under section fifteen of this article, with respect to all or part of such site, such taxpayer shall not be allowed to claim both such credits. The taxpayer shall be required, in the first taxable year such taxpayer is allowed to claim a credit under this section, to elect whether to claim the credit provided for under this section or the credit provided for under section fifteen of this article. Such election shall be made with the filing of the return or report required under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter, whichever is applicable, for such taxable year. Such election shall apply to and be binding in each subsequent taxable year applicable to the credit provided for under either this section or section fifteen of this article. A taxpayer who or which has been allowed a credit under section fifteen of this article, in a taxable year preceding the first taxable year such taxpayer is allowed to claim a credit under this section, shall not be precluded from making the election provided for in this paragraph.

(9) Cross-references. For application of the credit provided for in this subdivision, see the following provisions of this chapter:

- (i) Article 9: Section 187-h.
- (ii) Article 9-A: Section 210-B: subdivision 18.
- (iii) Article 22: Section 606: subsections (i) and (ee).
- (iv) Article 33: Section 1511: subdivision (v).

§ 23. Environmental remediation insurance credit. (a) Allowance of credit. General. A taxpayer subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of such credit shall be equal to the lesser of thirty thousand dollars or fifty percent of the premiums paid on or after the date of the brownfield site cleanup agreement executed by the taxpayer and the department of environmental conservation pursuant to section 27-1409 of the environmental conservation law by the taxpayer for environmental remediation insurance issued with respect to a qualified site.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) Qualified site. A "qualified site" is a site with respect to which a certificate of completion has been issued to the taxpayer by the commissioner of environmental conservation pursuant to section 27-1419 of the environmental conservation law to an "applicant" as that term is defined in subdivision one of section 27-1405 of the environmental conservation law.

(2) Certificate of completion. A "certificate of completion" issued by the commissioner of environmental conservation pursuant to section 27-1419 of the environmental conservation law.

(3) Environmental remediation insurance. The term "environmental remediation insurance" shall mean that type of insurance described in section three thousand four hundred forty-seven of the insurance law.

(c) The credit provided for in subdivision one of this section shall be allowed for the taxable year in which the certificate of completion is issued to the taxpayer. Such credit shall be allowed only once with respect to a particular certificate of completion.

(d) If the certificate of completion issued to the taxpayer with respect to a qualified site is revoked by a determination issued pursuant to section 27-1419 of the environmental conservation law, the amount of credit allowed by this section shall be added back in the taxable year in which such determination is final and no longer subject to judicial review.

(e) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) Article 9: Section 187-i
- (2) Article 9-A: Section 210-B, subdivision 19
- (3) Article 22: Section 606, subsections (i) and (ff)
- (4) Article 33: Section 1511, subdivision (w).

§ 24. Empire state film production credit. (a) (1) Allowance of credit. A taxpayer which is a qualified film production company, or a qualified independent film production company, or which is a sole proprietor of or a member of a partnership which is a qualified film production company or a qualified independent film production company, and which is subject to tax under articles nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of this section, to be computed as hereinafter provided.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that: (i) the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the state in the production of such qualified film, (ii) except with respect to a qualified independent film production company or pilot, at least ten percent of the total principal photography shooting days spent in the production of such qualified film must be spent at a qualified film production facility, and (iii) qualified production costs that are attributable to scoring shall be eligible for an additional ten percent credit on such scoring costs when incurred within the state and when such scoring costs include payment to a minimum of five musicians. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the

production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed. However, in the case of a qualified film that receives funds from additional pool 2, no credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year that includes the last day of the allocation year for which the film has been allocated credit by the department of economic development. If the amount of the credit is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the first taxable year in which the credit may be claimed and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit is at least five million dollars, the credit shall be claimed over a three year period beginning in the first taxable year in which the credit may be claimed and in the next two succeeding taxable years, with one-third of the amount of the credit allowed being claimed in each year. Provided, however, in the case of a qualified film for which the credit application was received on or after January first, two thousand twenty-five, the credit shall be claimed in the taxable year that includes the last day of the allocation year for which the film has been allocated a credit by the department of economic development.

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this section or used in the calculation of the credit provided for under this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

(4) (i) Notwithstanding the foregoing provisions of this subdivision, a qualified film production company or qualified independent film

production company, that has applied for credit under the provisions of this section, agrees as a condition for the granting of the credit: (A) to include in each qualified film distributed by DVD, or other media for the secondary market, a New York promotional video approved by the governor's office of motion picture and television development or to include in the end credits of each qualified film "Filmed With the Support of the New York State Governor's Office of Motion Picture and Television Development" and a logo provided by the governor's office of motion picture and television development, and (B) to certify that it will purchase taxable tangible property and services, defined as qualified production costs pursuant to paragraph one of subdivision (b) of this section, only from companies registered to collect and remit state and local sales and use taxes pursuant to articles twenty-eight and twenty-nine of this chapter.

(ii) On or after January first, two thousand twenty-three, a qualified film production company or qualified independent film production company that has applied for credit under the provisions of this section shall, as a condition for the granting of the credit, file a diversity plan with the governor's office for motion picture and television development outlining specific goals for hiring a diverse workforce. The commissioner of economic development shall promulgate regulations implementing the requirements of this paragraph, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, to ensure compliance with the provisions of this paragraph. The governor's office for motion picture and television development shall review each submitted plan as to whether it meets the requirements established by the commissioner of economic development, and shall verify that the applicant has met or made good-faith efforts in achieving these goals. The diversity plan also shall indicate whether the qualified film production company or qualified independent film production company that has applied for credit under the provisions of this section intends to participate in training, education, and recruitment programs that are designed to promote and encourage the training and hiring in the film and television industry of New York residents who represent the diversity of the State's population.

(5) For the period two thousand fifteen through two thousand

thirty-six, in addition to the amount of credit established in paragraph two of this subdivision, a taxpayer shall be allowed a credit equal to (i) the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the wages, salaries or other compensation constituting qualified production costs as defined in paragraph two of subdivision (b) of this section, paid to individuals directly employed by a qualified film production company or a qualified independent film production company for services performed by those individuals in one of the counties specified in this paragraph in connection with a qualified film with a minimum budget of five hundred thousand dollars, and (ii) the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the qualified production costs (excluding wages, salaries or other compensation) paid or incurred in the production of a qualified film where the property constituting such qualified production costs was used, and the services constituting such qualified production costs were performed in any of the counties specified in this paragraph in connection with a qualified film with a minimum budget of five hundred thousand dollars where the majority of principal photography shooting days in the production of such film were shot in any of the counties specified in this paragraph. Provided, however, that the aggregate total eligible qualified production costs constituting wages, salaries or other compensation, for writers, directors, composers, producers, and performers shall not exceed forty percent of the aggregate sum total of all other qualified production costs. For purposes of the credit, the services must be performed and the property must be used in one or more of the following counties: Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or Yates.

(6) Production plus program. (i) A qualified independent film production company or a qualified film production company, or a company that is a majority owner of one or more qualified film production

companies or qualified independent film production companies, may apply to participate in the production plus program after it, or qualified film production companies or qualified independent film production companies of which it is the majority owner, has submitted two or more initial applications to the empire state film production tax credit program after January first, two thousand twenty-five.

(ii) A qualified film production company or qualified independent film production company that has been accepted into the production plus program, or is majority-owned by a company that has been accepted into the production plus program, may be eligible to receive an additional tax credit equal to the product of ten percent and the qualified production costs in New York state if program acceptance was based on initial applications, the sum of which totaled at least one hundred million dollars in qualified production costs in New York state.

(iii) A qualified independent film production company that has been accepted into the production plus program, or is majority-owned by a company that has been accepted into the production plus program, that is engaging in the production of a feature length film, television film or television series as defined in the regulations promulgated for this program, may receive an additional tax credit equal to the product of five percent and the qualified production costs incurred on all subsequent films or series applied for if program acceptance was based on initial applications the sum of which totaled at least twenty million dollars in qualified production costs in New York state.

(iv) Initial applications for feature length films and new television series submitted after December thirty-first, two thousand twenty-eight shall not be eligible for the program pursuant to this paragraph; provided, however, a television series that enters the program pursuant to this paragraph before January first, two thousand twenty-nine shall continue to be eligible.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post production) of a qualified film. In the case of an eligible relocated television series,

the term "qualified production costs" shall include, in the first season that the eligible relocated television series is produced in New York after relocation, qualified relocation costs. Provided, however, that the aggregate total eligible qualified production costs for producers, writers, directors, performers (other than background actors with no scripted lines), and composers shall not exceed forty percent of the aggregate sum total of all other qualified production costs.

(2) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post production) of a qualified film. "Production costs" shall not include costs for a story, script or scenario to be used for a qualified film. "Production costs" generally include the wages or salaries or other compensation for writers, directors, composers and performers, technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals, and shall include the wages, salaries or other compensation of no more than two producers per qualified film.

(3) "Qualified film" means a feature-length film, television film, relocated television production, television pilot or television series, regardless of the medium by means of which the film, pilot or series is created or conveyed. For the purposes of the credit provided by this section only, a "qualified film" whose majority of principal photography shooting days in the production of the qualified film are shot in Westchester, Rockland, Nassau, or Suffolk county or any of the five New York City boroughs shall have a minimum budget of one million dollars. A "qualified film", whose majority of principal photography shooting days in the production of the qualified film are shot in any other county of the state than those listed in the preceding sentence shall have a minimum budget of two hundred fifty thousand dollars. "Qualified film" shall not include: (i) a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime

"soap opera"), commercials, music videos or "reality" program; (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct); or (iii) other than a relocated television production, a television series commonly known as variety entertainment, variety sketch and variety talk, i.e., a program with components of improvisational or scripted content (monologues, sketches, interviews), either exclusively or in combination with other entertainment elements such as musical performances, dancing, cooking, crafts, pranks, stunts, and games and which may be further defined in regulations of the commissioner of economic development. However, a qualified film shall include a television series as described in subparagraph (iii) of this paragraph only if an application for such series has been deemed conditionally eligible for the tax credit under this section prior to April first, two thousand twenty, such series remains in continuous production for each season, and an annual application for each season of such series is continually submitted for such series after April first, two thousand twenty. A series that changes either or both the title of the series or the principal cast prior to March thirty-first, two thousand twenty-three, shall be considered to remain in continuous production for each season, provided the series films at the same location as prior seasons, is produced by the same entity, and retains at least eighty percent of the staff from the prior season.

(4) "Film production facility" shall mean a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage, provided, however, that an armory owned by the state or city of New York located in the city of New York shall not be considered to be a "film production facility" unless it meets the criteria contained in paragraph five of this subdivision or unless such facility is used by a qualified independent film production company.

(5) "Qualified film production facility" shall mean a film production facility in the state, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space, provided, however, that except with respect to a qualified film

production facility being used by a qualified independent film production company: (i) a film production facility in the city of New York must contain at least one sound stage having a minimum of seven thousand square feet of contiguous production space that is sound proof with a Noise Criteria ("NC") of 30 or better, has sufficient heating and air conditioning for shooting without the need for supplemental units, incorporates a permanent grid and sufficient built-in electric service for shooting without the need for generators, and is column-free with a clear height of at least sixteen feet under the permanent grid for facilities constructed on or after January first, two thousand nineteen, and at least twelve feet under the permanent grid for facilities constructed before January first, two thousand nineteen; and (ii) an armory owned by the state or city of New York located in the city of New York that does not satisfy the criteria of subparagraph (i) of this paragraph shall be treated as a qualified film production facility upon certification by the governor's office of motion picture and television development of a petition submitted to that office by a qualified film production company establishing that no qualified film production facility is available in the city of New York that has stage space available for shooting such company's film. Such petition shall be submitted no later than ninety days prior to the start of principal photography for the qualified film and the governor's office of motion picture and television development shall have ten days to certify or reject the petition. A stage will be deemed unavailable if consideration has been paid for its use or such stage is currently under an agreement with an option for use and, in either circumstance, such period of use includes the petitioner's estimated start date of principal photography.

(6) "Qualified film production company" is a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified film and controls the qualified film during production.

(7) "Qualified independent film production company" is a corporation, partnership, limited partnership, or other entity or individual, that or who (i) is principally engaged in the production of a qualified film, (ii) is not publicly traded, and (iii) is not majority owned, fifty-one percent or more, by a company publicly traded on a United States stock exchange.

(8) "Relocated television production" shall mean, notwithstanding the limitations in subparagraph (i) of paragraph three of this subdivision, a television production that is a talk or variety program that filmed at least two seasons outside the state prior to its first relocated season in New York, the episodes are filmed before a studio audience of two hundred or more, and the relocated television production incurs (i) at least thirty million dollars in annual production costs in the state, or (ii) at least ten million dollars in capital expenditures at a qualified production facility in the state.

(9) "Eligible relocated television series" shall mean the first two years of a regularly occurring production intended to run in its initial broadcast, regardless of the medium or mode of its distribution, in a series of narrative and/or thematically related episodes, each of which has a running time of at least thirty minutes in length (inclusive of commercial advertisement and interstitial programming, if any), which had filmed a minimum of six episodes of the television series outside the state immediately prior to relocating to the state, where the television series had a total minimum budget of at least one million dollars per episode. For the purposes of this definition only, a television series produced by and for media services providers described as streaming services and/or digital platforms (and excluding network/cable) shall mean a regularly occurring production intended to run in its initial release in a series of narrative and/or thematically related episodes, the aggregate length of which is at least seventy-five minutes, although the episodes themselves may vary in duration from the thirty minutes specified for network/cable production.

(10) "Qualified relocation costs" means the costs incurred, excluding wages, salaries and other compensation, in the first season that an eligible relocated television series relocates to New York including such costs incurred to transport sets, props and wardrobe to New York and other costs as determined by the department of economic development to the extent such costs do not exceed six million dollars.

(c) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B: subdivision 20.

(2) article 22: section 606: subsection (gg).

(d) Notwithstanding any provision of this chapter, employees and

officers of the governor's office of motion picture and television development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for credit submitted to the governor's office of motion picture and television development.

(e) Allocation of credit. (1) The aggregate amount of tax credits allowed under this section, subdivision thirty-six of section two hundred ten and subsection (gg) of section six hundred six of this chapter in any calendar year shall be twenty-five million dollars in two thousand four and two thousand five, sixty million dollars in two thousand six and two thousand seven, sixty-five million dollars in two thousand eight, seventy-five million dollars in two thousand nine, eighty-five million dollars in two thousand ten, ninety million dollars in two thousand eleven and two thousand twelve, and one hundred ten million dollars in two thousand thirteen. Such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers in order of priority based upon the date of filing an application for allocation of film production credit with such office. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

(2) The aggregate amount of tax credits allowed pursuant to the authority of subdivision (b) of section twelve hundred one-a of this chapter in any calendar year shall be twelve million five hundred thousand dollars in two thousand four and two thousand five and thirty million dollars in two thousand six through two thousand eleven. Such aggregate amount of credits shall be allocated by the mayor's office of film, theater and broadcasting among taxpayers in order of priority based upon the date of filing an application for allocation of film production credit with such office. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess

shall be treated as having been applied for on the first day of the subsequent year.

(3) Additional pool 1 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional three hundred fifty million dollars in two thousand nine. This additional amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section.

* (4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional four hundred twenty million dollars in each year starting in two thousand ten through two thousand twenty-three and seven hundred million dollars each year starting in two thousand twenty-four through two thousand thirty-six, provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in two thousand thirteen and two thousand fourteen, twenty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand fifteen through two thousand twenty-three, and forty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand twenty-four through two thousand thirty-six. This amount shall be allocated by the department of economic development among taxpayers in accordance with subdivision (a) of this section. If the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film post production tax credit pursuant to section thirty-one of this article is insufficient to utilize the balance of unallocated empire state film post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision twenty of section two hundred ten-B and subsection (gg) of section six hundred six of this

chapter. Also, if the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision thirty-two of section two hundred ten-B and subsection (qq) of section six hundred six of this chapter. The department of economic development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2 where the taxpayer filed an initial application before April first, two thousand twenty-three, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by the department of economic development. In the case of a qualified film that receives funds from additional pool 2 where the taxpayer filed an initial application on or after April first, two thousand twenty-three and before January first, two thousand twenty-five, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year that includes the last day of the allocation year for which the film has been allocated credit by the department of economic development. Provided, however, in the case of a qualified film for which the credit application was received on or after January first, two thousand twenty-five, the credit shall be claimed in the taxable year that includes the last day of the allocation year for which the film has been allocated a credit by the department of economic development.

* NB Effective until the first of January next succeeding the date the

department of economic development provides notice to the legislative bill drafting commission of a determination pursuant to § 7 of chapter 683 of 2019

* (4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional four hundred twenty million dollars in each year starting in two thousand ten through two thousand twenty-three and seven hundred million dollars in each year starting in two thousand twenty-four through two thousand thirty-six, provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in two thousand thirteen and two thousand fourteen, twenty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand fifteen through two thousand twenty-three, and forty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand twenty-four through two thousand thirty-six. Provided further, five million dollars of the annual allocation shall be made available for the television writers' and directors' fees and salaries credit pursuant to section twenty-four-b of this article in each year starting in two thousand twenty through two thousand thirty-six. This amount shall be allocated by the department of economic development among taxpayers in accordance with subdivision (a) of this section. If the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film post production tax credit pursuant to section thirty-one of this article is insufficient to utilize the balance of unallocated empire state film post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision twenty of section two hundred ten-B and subsection (gg) of section six hundred six of this chapter. Also, if the commissioner of economic development determines

that the aggregate amount of tax credits available from additional pool 2 for the empire state film post production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film production tax credit pursuant to this section is insufficient to utilize the balance of unallocated film production tax credits from such pool, then all or part of the remainder, after such pending applications are considered, shall be made available for allocation for the empire state film post production credit pursuant to this section, subdivision thirty-two of section two hundred ten-B and subsection (qq) of section six hundred six of this chapter. The department of economic development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2 where the taxpayer filed an initial application before April first, two thousand twenty-three and before January first, two thousand twenty-five, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year immediately following the allocation year for which the film has been allocated credit by the department of economic development. In the case of a qualified film that receives funds from additional pool 2 where the taxpayer filed an initial application on or after April first, two thousand twenty-three and before January first, two thousand twenty-five, no empire state film production credit shall be claimed before the later of (1) the taxable year the production of the qualified film is complete, or (2) the taxable year that includes the last day of the allocation year for which the film has been allocated credit by the department of economic development. In the case of a qualified film for which the taxpayer filed an initial application on or after January first, two thousand twenty-five, the credit shall be claimed in the taxable year that includes the last day of the allocation year for which the production of such qualified film has been allocated a credit by the department of economic development.

* NB Effective on the first of January next succeeding the date the

department of economic development provides notice to the legislative bill drafting commission of a determination pursuant to § 7 of chapter 683 of 2019

(f) (1) With regard to certificates of tax credit issued on or after January first, two thousand twenty, the commissioner of economic development shall reduce by one-quarter of one percent the amount of credit allowed to a taxpayer and this reduced amount shall be reported on a certificate of tax credit issued pursuant to this section and the regulations promulgated by the commissioner of economic development to implement this credit program. Provided, however, for certificates of tax credit issued on or after January first, two thousand twenty-three, the amount of credit shall be reduced by one-half of one percent allowed to the taxpayer.

(2) By January thirty-first of each year, the commissioner of economic development shall report to the comptroller the total amount of such reductions of tax credit during the immediately preceding calendar year. On or before March thirty-first of each year, the comptroller shall transfer without appropriations from the general fund to the empire state entertainment diversity job training development fund established under section ninety-seven-ff of the state finance law an amount equal to the total amount of such reductions reported by the commissioner of economic development for the immediately preceding calendar year.

(3) Notwithstanding paragraph two of this subdivision, the following provisions shall apply with respect to reductions of tax credit in two thousand twenty. (i) The commissioner of economic development shall report to the comptroller by June first, two thousand twenty the total amount of such reductions of tax credit during the period of January first, two thousand twenty through May fifteenth, two thousand twenty. On or before July first, two thousand twenty, the comptroller shall transfer without appropriations from the general fund to the empire state entertainment diversity job training development fund an amount equal to the total amount of such reductions reported by the commissioner of economic development for the period of January first, two thousand twenty through May fifteenth, two thousand twenty. (ii) By January thirty-first, two thousand twenty-one, the commissioner of economic development shall report to the comptroller the total amount of such reductions of tax credit during the period of May sixteenth, two

thousand twenty through December thirty-first, two thousand twenty. On or before March thirty-first, two thousand twenty-one, the comptroller shall transfer without appropriations from the general fund to the empire state entertainment diversity job training development fund an amount equal to the total amount of such reductions reported by the commissioner of economic development for the period of May sixteenth, two thousand twenty through December thirty-first, two thousand twenty.

(g) Credit recapture. If a certificate of tax credit issued by the department of economic development pursuant to this section is revoked by such department because the taxpayer does not meet the eligibility requirements of this section, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

*** § 24-a. Musical and theatrical production credit.** (a)(1) Allowance of credit. A taxpayer which is a qualified musical and theatrical production company, or which is a sole proprietor of or a member of a partnership which is a qualified musical and theatrical production company, and which is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referred to in subdivision (c) of this section, and to be computed as provided in this section.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of twenty-five percent and the sum of the qualified production expenditures and the transportation expenditures.

(3) No qualified production expenditures or transportation expenditures used by a taxpayer either as the basis for the allowance of the credit provided for pursuant to this section or used in the calculation of the credit provided pursuant to this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Qualified musical and theatrical production" means a for-profit

live, dramatic stage presentation in a qualified production facility, certified pursuant to rules and regulations promulgated by the department of economic development, as a qualified touring production.

(2) "Qualified touring production" means a live, dramatic stage production that, in its original or adaptive version, is performed in a qualified production facility, and has begun or will begin a tour, consisting of eight or more shows in three or more localities.

(3) "Qualified production expenditure" means any costs for tangible property used and services performed directly and predominantly in the production of a qualified musical and theatrical production within the state including: (i) expenditures for design, construction and operation, including sets, special and visual effects, costumes, wardrobes, make-up, accessories and costs associated with sound, lighting, and staging, (ii) all salaries, wages, fees, and other compensation including related benefits for services performed of which the total allowable expense shall not exceed two hundred thousand dollars per week, and (iii) technical and crew production costs, such as expenditures for qualified production facilities, or any part thereof, props, make-up, wardrobe, costumes, equipment used for special and visual effects, sound recording, set construction, and lighting.

(4) "Qualified production facility" means a facility located in the state but outside the city of New York (i) in which live theatrical productions are or are intended to be primarily presented, (ii) that contains at least one stage, a seating capacity of one thousand or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the qualified musical and theatrical production, (iii) for which receipts attributable to ticket sales constitute seventy-five percent or more of gross receipts of the facility, and (iv) which is not a licensee, or affiliated with a licensee, of the New York state gaming commission under the racing, pari-mutuel wagering and breeding law.

(5) "Qualified musical and theatrical production company" is a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified musical or theatrical production and performs in a qualified production facility.

(6) (i) "Transportation expenditures" means transportation expenditures incurred and paid directly and predominantly in the

production of a qualified musical and theatrical production. Such expenditures shall include the packaging, crating, and transportation within the state for use in a qualified theater production of sets, costumes, or other tangible property constructed or manufactured in and out of state, and the transportation of the cast and crew within the state. Such term shall include the packaging, crating, and transporting within the state of property and equipment used for special and visual effects, sound, lighting and staging, costumes, wardrobes, make-up and related accessories and materials, as well as any other performance or production-related property and equipment.

(ii) Transportation expenditures shall not include any costs to transport property and equipment to be used only for filming and not in a qualified theater production, any indirect costs, and expenditures that are later reimbursed by a third party, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production.

(c) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B: subdivision 47.

(2) article 22: section 606: subsection (u).

(d) Notwithstanding any provision of this chapter, (i) employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for certification submitted to the department of economic development, and (ii) the commissioner and the commissioner of the department of economic development may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

(e) Maximum amount of credits. (1) The aggregate amount of tax credits allowed under this section, subdivision forty-seven of section

two hundred ten-B and subsection (u) of section six hundred six of this chapter in any calendar year shall be eight million dollars. Such aggregate amount of credits shall be allocated by the department of economic development among taxpayers in order of priority based upon the date of filing an application for allocation of musical and theatrical production credit with such department. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations by October thirty-first, two thousand fourteen to establish procedures for the allocation of tax credits as required by subdivision (a) of this section. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers to substantiate to the department the amount of tax credits allocated to such taxpayers, and such other provisions as deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such October thirty-first, two thousand fourteen deadline.

(f) The department of economic development shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted on February first of each year evaluating the effectiveness of the musical and theatrical production tax credit provided by this section in stimulating the growth of the musical and theatrical industry in the state. Such report shall include, but need not be limited to, in total and by qualified musical and theatrical production, the number of qualified musical and theatrical productions which received a musical and theatrical production credit, the qualified production expenditures, the transportation expenditures, the qualified production facilities, and the credit amounts claimed by each qualified musical and theatrical production, as well as the impact on employment and the economy of the state. Such report shall include (1) the credit-eligible man hours for

each project and the total wages for such credit-eligible man hours for each project as well as the name of each taxpayer allocated a tax credit for each project and the county of residence or incorporation of such taxpayer or, if the taxpayer does not reside or is not incorporated in New York, then the state of residence or incorporation; provided however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of those tax credits must be included in the report instead of information about the taxpayer claiming the tax credit; and (2) the amount of tax credit allocated to each taxpayer; provided, however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the amount of tax credit earned by each entity must be included in the report instead of information about the taxpayer claiming the tax credit, and information identifying the project associated with each taxpayer for which a tax credit was claimed under this section, including the name of the musical and theatrical production and county in which the production is performed must be included in such report. Such report shall be based on data available from the application filed with the department of economic development for allocation of musical and theatrical production credits. Notwithstanding any provision of law to the contrary, the information contained in the report shall be public information. The report may also include any recommendations of changes in the calculation or administration of the credit, and any other recommendation of the commissioner of the department of economic development regarding continuing modification, repeal of such act, and such other information regarding the act as the commissioner of the department of economic development may feel useful and appropriate.

* NB Repealed January 1, 2030

*** § 24-b. Television writers' and directors' fees and salaries credit.**

(a)(1) A taxpayer which is a qualified film production company, or a qualified independent film production company, or which is a sole

proprietor of or a member of a partnership which is a qualified film production company or a qualified independent film production company, and which is subject to tax under articles nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of this section, to be computed as hereinafter provided.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent and the qualified television writers' and directors' fees and salaries costs paid or incurred in the production of a qualified film, provided that: (i) the credit amount shall not exceed fifty thousand dollars for qualified television writers' and directors' fees and salaries claimed for such expenses incurred for the employment of any one specific writer or director for the production of a single television pilot or a single episode of a television series, and (ii) the credit amount shall not exceed one hundred fifty thousand dollars for qualified television writers' and directors' fees and salaries claimed for such expenses incurred for the employment of any one specific writer or director. In addition, under no circumstances shall the credit amount include fees or salaries for more than one director per episode. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

(3) No qualified television writers' and directors' fees and salaries used by a taxpayer either as the basis for the allowance of the credit provided for pursuant to this section or used in the calculation of the credit provided pursuant to this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Qualified film production company" is a corporation, partnership, limited partnership, or other entity or individual whose project is conditionally eligible to receive a tax credit under section twenty-four of this article which or who is principally engaged in the production of a qualified film and controls the qualified film during production.

(2) "Qualified independent film production company" is a corporation, partnership, limited partnership, or other entity or individual whose project is conditionally eligible to receive a tax credit under section

twenty-four of this article, that or who (i) is principally engaged in the production of a qualified film with a maximum budget of fifteen million dollars, (ii) controls the qualified film during production, and (iii) either is not a publicly traded entity, or no more than five percent of the beneficial ownership of which is owned, directly or indirectly, by a publicly traded entity.

(3) "Qualified film" means a television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed.

(4) "Qualified television writers' and directors' fees and salaries" means salaries or fees paid to a writer or director who receives an on-air credit, provided that in each case, such writer or director is a minority group member, as defined in subdivision eight of section three hundred ten of the executive law, or a woman, and provided, further, that salaries or fees paid to any writer or director who is a profit participant in the qualified film shall not be eligible. Such fees shall not include relocation fees or hotel costs and per diems. In addition, such fees shall not include salaries or fees paid to writers or directors for work done on episodes of television series that were deemed conditionally eligible for the tax credit under section twenty-four of this article prior to the tax year for which the credit is first available.

(5) "Writer" means a person who is engaged by a qualified film production company or a qualified independent film production company to write television scripts, outlines, rewrites, stories, or teleplays for television series and who reports to work regularly in a writers room located in the state. For the purposes of this definition, "writer" shall not include showrunners or executive producers.

(6) "Writers room" means a room or physical location in the state where writers employed by a qualified film production company or qualified independent film production company write television scripts, outlines, rewrites, stories, or teleplays for television series utilized in a qualified film. A writers room is located in the state only if it is in use in the state at least eighty percent of the time it is in existence.

(7) "Director" means an individual employed or retained to direct the production, as the word "direct" is commonly used in the motion picture

industry, who would be classified as a director under the basic agreement in place between the Association of Motion Picture and Television Producers and the Director's Guild of America and who must meet the minimum criteria for work on qualified productions in New York state as established by the commissioner of economic development by regulation.

(8) "Profit participant" is an individual who has negotiated for a percentage of profits generated by a qualified film. Profit participation does not include monies contractually required by collectively bargained agreements for reuse of a qualified film on different platforms over time.

(c) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B: subdivision 54.

(2) article 22: section 606: subsection (v).

(d) Notwithstanding any provision of this chapter, (1) employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for certification submitted to the department of economic development, and (2) the commissioner and the commissioner of the department of economic development may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

(e) Maximum amount of credits. (1) The aggregate amount of tax credits allowed under this section, subdivision fifty-four of section two hundred ten-B and subsection (v) of section six hundred six of this chapter in any calendar year shall be five million dollars. Such aggregate amount of credits shall be allocated by the department of economic development among taxpayers in order of priority based upon the date of filing an application for allocation of television writers' and

directors' fees and salaries credit with such department. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations to establish procedures for the allocation of tax credits as required by subdivision (a) of this section. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers to substantiate to the department the amount of tax credits allocated to such taxpayers, and such other provisions as deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis.

(f) The department of economic development shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted on February first of each year evaluating the effectiveness of the television writers' and directors' fees and salaries tax credit provided by this section in stimulating the growth of diversity in the film industry in the state. Such report shall include, but need not be limited to, the number of qualified film production companies and/or qualified independent film production companies which received a television writers' and directors' fees and salaries credit, the credit amounts claimed by each qualified film production company and/or qualified independent film production company, as well as the impact on employment and the economy of the state. Such report shall be based on data available from the application filed with the department of economic development for allocation of television writers' and directors' fees and salaries credits. Notwithstanding any provision of law to the contrary, the information contained in the report shall be public information. The report may also include any recommendations of changes in the calculation or administration of the credit, and any other recommendation of the commissioner of the department of economic development regarding

continuing modification, repeal of such act, and such other information regarding the act as the commissioner of the department of economic development may feel useful and appropriate.

* NB Effective on the first of January next succeeding the date the department of economic development provides notice to the legislative bill drafting commission of a determination pursuant to § 6 sb 2 (b) of chapter 683 of 2019

*** § 24-c. New York city musical and theatrical production tax credit.**

(a) (1) Allowance of credit. A taxpayer that is a qualified New York city musical and theatrical production company, or is a sole proprietor of or a member of a partnership that is a qualified New York city musical and theatrical production company, and that is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referred to in subdivision (d) of this section, and to be computed as provided in this section.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of twenty-five percent and the sum of the qualified production expenditures paid for during the qualified New York city musical and theatrical production's credit period. Provided however that the amount of the credit cannot exceed three hundred fifty thousand dollars per qualified New York city musical and theatrical production in a level two qualified New York city production facility and three million dollars per qualified New York city musical and theatrical production in a level one qualified New York city production facility. In no event shall a qualified New York city musical and theatrical production be eligible for more than one credit under this program.

(3) No qualified production expenditures used by a taxpayer either as the basis for the allowance of the credit provided pursuant to this section or used in the calculation of the credit provided pursuant to this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Qualified New York city musical and theatrical production" means a for-profit live, dramatic stage presentation that, in its original or adaptive version, is performed in a level one or level two qualified New York city production facility, whether or not such production was performed in a level one or level two qualified New York city production facility prior to the state disaster emergency pursuant to executive order two hundred two of two thousand twenty, provided, however, that productions performing in a level two qualified New York city production facility shall have a production budget greater than or equal to seven hundred fifty thousand dollars and incur qualified production expenditures greater than or equal to seven hundred fifty thousand dollars.

(2) "Qualified production expenditure" means any costs for tangible property used and services performed directly and predominantly in the production of a qualified musical and theatrical production within the state of New York, including: (i) expenditures for design, construction and operation, including sets, special and visual effects, costumes, wardrobes, make-up, accessories and costs associated with sound, lighting, and staging; (ii) all salaries, wages, fees, and other compensation including related benefits for services performed of which the total allowable expense shall not exceed two hundred thousand dollars per week; and (iii) technical and crew production costs, such as expenditures for a level one or level two qualified New York city production facility, or any part thereof, props, make-up, wardrobe, costumes, equipment used for special and visual effects, sound recording, set construction, and lighting. Qualified production expenditure does not include any costs incurred prior to the credit period of a qualified New York city musical and theatrical production company.

(3) (i) "Level one qualified New York city production facility" means a facility located within the (A) borough of Manhattan, bounded by and including forty-first street and fifty-fourth street and between sixth avenue and ninth avenue in which live theatrical productions are or are intended to be primarily presented, (B) that contains at least one stage, a seating capacity of five hundred or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the qualified musical and theatrical production, and (C) for which receipts

attributable to live theatrical productions constitute seventy-five percent or more of gross receipts of the facility.

(ii) "Level two qualified New York city production facility" means a facility located within the borough of Manhattan (A) in which live theatrical productions are or are intended to be primarily presented, (B) that contains at least one stage, a seating capacity of one hundred or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the qualified musical and theatrical production, and (C) for which receipts attributable to live theatrical productions constitute seventy-five percent or more of gross receipts of the facility.

(4) "Qualified New York city musical and theatrical production company" is a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified musical or theatrical production that is to be performed in a level one or level two qualified New York city production facility.

(5) (i) "The credit period of a qualified New York city musical and theatrical production company" is the period starting on the production start date and ending on the earlier of the date the qualified musical and theatrical production has expended sufficient qualified production expenditures to reach its credit cap, September thirtieth, two thousand twenty-seven or the date the qualified musical and theatrical production closes.

(ii) "The production start date" is the date that is up to twelve weeks prior to the first performance of the qualified musical and theatrical production.

(6) "Production budget" means all estimated costs to be incurred or paid before the first public appearance.

(c) The credit shall be allowed for the taxable year beginning on or after January first, two thousand twenty-one but before January first, two thousand twenty-eight. A qualified New York city musical and theatrical production company shall claim the credit in the year in which its credit period ends.

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B: subdivision 57;

(2) article 22: section 606: subsection (mmm).

(e) Notwithstanding any provision of this chapter, (i) employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for certification submitted to the department of economic development, and (ii) the commissioner and the commissioner of the department of economic development may release the names and addresses of any qualified New York city musical and theatrical production company entitled to claim this credit and the amount of the credit earned by such company.

(f) Maximum amount of credits. (1) The aggregate amount of tax credits allowed under this section, subdivision fifty-seven of section two hundred ten-B and subsection (mmm) of section six hundred six of this chapter shall be five hundred fifty million dollars. Such aggregate amount of credits shall be allocated by the department of economic development among taxpayers based on the date of first performance of the qualified musical and theatrical production.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations to establish procedures for the allocation of tax credits as required by this section. Such rules and regulations shall include provisions describing the application process, the due dates for such applications, the standards that will be used to evaluate the applications, the documentation that will be provided by applicants to substantiate to the department the amount of qualified production expenditures of such applicants, and such other provisions as deemed necessary and appropriate. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis. In no event shall a qualified New York city musical and theatrical production submit an application for this program after June thirtieth, two thousand twenty-seven.

(g) Any qualified New York city musical and theatrical production company that performs in a level one or level two qualified New York city production facility and applies to receive a credit under this

section shall be required to: (1) participate in a New York state diversity and arts job training program; (2) create and implement a plan to ensure that their production is available and accessible for low-or no-cost to low income New Yorkers; and (3) contribute to the New York state council on the arts, cultural program fund an amount up to fifty percent of the total credits received if its production earns ongoing revenue prospectively after the end of the credit period that is at least equal to two hundred percent of its ongoing production costs, with such amount payable from twenty-five percent of net operating profits, such amounts payable on a monthly basis, up until such fifty percent of the total credit amount is reached. Any funds deposited pursuant to this subdivision may be used for arts and cultural grant programs of the New York state council on the arts as specified in subdivision five of section ninety-nine-ll of the state finance law.

* NB Repealed January 1, 2028

§ 24-d. Empire state independent film production credit. (a) (1) Allowance of credit. A taxpayer which is a qualified independent film production company, or which is a sole proprietor of or a member of a partnership which is a qualified independent film production company, and which is subject to tax under articles nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of this section, to be computed as hereinafter provided.

(2) (i) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the state in the production of such qualified film. However, if

the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without the state outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed. A taxpayer shall not be eligible for a tax credit established by this section for the production of more than two qualified films per calendar year.

(ii) In addition to the amount of credit established in subparagraph (i) of this paragraph, a taxpayer shall be allowed a credit equal to (A) the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the wages, salaries or other compensation constituting qualified production costs as defined in paragraph one of subdivision (b) of this section, paid to individuals directly employed by a qualified independent film production company for services performed by those individuals in one of the counties specified in this subparagraph in connection with a qualified independent film with a minimum budget of five hundred thousand dollars, and (B) the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the qualified production costs (excluding wages, salaries or other compensation) paid or incurred in the production of a qualified film where the property constituting such qualified production costs was used, and the services constituting such qualified production costs were performed in any of the counties specified in this subparagraph in connection with a qualified film with a minimum budget of five hundred thousand dollars where the majority of principal photography shooting days in the production of such film were shot in any of the counties specified in this paragraph. Provided, however, that the aggregate total eligible qualified production costs

constituting wages, salaries or other compensation, for writers, directors, composers, producers, and performers shall not exceed forty percent of the aggregate sum total of all other qualified production costs. For purposes of the credit, the services must be performed and the property must be used in one or more of the following counties: Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or Yates and (C) qualified production costs that are attributable to scoring shall be eligible for an additional ten percent credit on such scoring costs when incurred within the state and when such scoring costs include payment to a minimum of five musicians.

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this section or used in the calculation of the credit provided for under this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

(4) Notwithstanding the foregoing provisions of this subdivision, a qualified independent film production company that has applied for credit under the provisions of this section, agrees as a condition for the granting of the credit: (i) to include in each qualified film distributed by DVD, or other media for the secondary market, a New York promotional video approved by the governor's office of motion picture and television development or to include in the end credits of each qualified film "Filmed With the Support of the New York State Governor's Office of Motion Picture and Television Development" and a logo provided by the governor's office of motion picture and television development, and (ii) to certify that it will purchase taxable tangible property and services, defined as qualified production costs pursuant to paragraph one of subdivision (b) of this section, only from companies registered to collect and remit state and local sales and use taxes pursuant to articles twenty-eight and twenty-nine of this chapter.

(b) Definitions. As used in this section, the following terms shall

have the following meanings:

(1) "Qualified production costs" means production costs only to the extent such costs, excluding labor costs, do not exceed sixty million dollars and are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post production) of a qualified film. In the case of an eligible relocated television series, the term "qualified production costs" shall include, in the first season that the eligible relocated television series is produced in New York after relocation, qualified relocation costs. Provided, however, that the aggregate total eligible qualified production costs for producers, writers, directors, performers (other than background actors with no scripted lines), and composers shall not exceed forty percent of the aggregate sum total of all other qualified production costs.

(2) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post production) of a qualified film. "Production costs" shall not include costs for a story, script or scenario to be used for a qualified film. "Production costs" generally include writers, directors, composers and performers, technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, scoring, set construction, lighting, shooting, editing and meals.

(3) "Qualified film" means a scripted narrative feature-length film, television film, relocated television series or television series, regardless of the medium by means of which the film or series is created or conveyed. For the purposes of the credit provided by this section only, a "qualified film" whose majority of principal photography shooting days in the production of the qualified film are shot in Westchester, Rockland, Nassau, or Suffolk county or any of the five New York City boroughs shall have a minimum budget of one million dollars. A "qualified film", whose majority of principal photography shooting days in the production of the qualified film are shot in any other county of the state than those listed in the preceding sentence shall have a minimum budget of two hundred fifty thousand dollars. "Qualified film" shall not include: (i) a television pilot, documentary film, news or

current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program; (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct); or (iii) a television series commonly known as variety entertainment, variety sketch and variety talk, i.e., a program with components of improvisational or scripted content (monologues, sketches, interviews), either exclusively or in combination with other entertainment elements such as musical performances, dancing, cooking, crafts, pranks, stunts, and games and which may be further defined in regulations of the commissioner of economic development.

(4) "Film production facility" shall mean a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage, provided, however, that an armory owned by the state or city of New York located in the city of New York shall not be considered to be a "film production facility" unless such facility is used by a qualified independent film production company.

(5) "Qualified film production facility" shall mean a film production facility in the state, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

(6) "Qualified independent film production company" is a corporation, partnership, limited partnership, or other entity or individual, that or who (i) is principally engaged in the production of a qualified film, (ii) is not publicly traded, and (iii) is not majority owned, fifty-one percent or more, by a company publicly traded on a United States stock exchange.

(7) "Relocated television series" shall mean the first two years of a regularly occurring production intended to run in its initial broadcast, regardless of the medium or mode of its distribution, in a series of narrative and/or thematically related episodes, each of which has a

running time of at least thirty minutes in length (inclusive of commercial advertisement and interstitial programming, if any), which had filmed a minimum of six episodes of the television series outside the state immediately prior to relocating to the state, where the television series had a total minimum budget of at least one million dollars per episode. For the purposes of this definition only, a television series produced by and for media services providers described as streaming services and/or digital platforms (and excluding network/cable) shall mean a regularly occurring production intended to run in its initial release in a series of narrative and/or thematically related episodes, the aggregate length of which is at least seventy-five minutes, although the episodes themselves may vary in duration from the thirty minutes specified for network/cable production.

(8) "Qualified relocation costs" means the costs incurred, excluding wages, salaries and other compensation, in the first season that a relocated television series relocates to New York, including such costs incurred to transport sets, props and wardrobe to New York and other costs as determined by the department of economic development to the extent such costs do not exceed six million dollars.

(9) If the total amount of allocated credits applied for in any particular year is less than the aggregate amount of tax credits allowed for such year under this section, any unused portion may be carried over and added to the aggregate amount of credits allowed in the next succeeding taxable year or years.

(c) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B: subdivision 20-a.

(2) article 22: section 606: subsection (gg-1).

(d) Notwithstanding any provision of this chapter, employees and officers of the governor's office of motion picture and television development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for credit submitted to the governor's office of motion picture and television development.

(e) Allocation of credit. The aggregate amount of tax credits allowed under this section, subdivision twenty-a of section two hundred ten and subsection (gg-1) of section six hundred six of this chapter in any calendar year shall be (1) twenty million dollars for qualified films with a budget of less than ten million dollars of qualified production costs; and (2) eighty million dollars for qualified films with a budget of ten million dollars or more of qualified production costs. There shall be at least two application periods each year; such aggregate amount of credits shall be allocated by the governor's office for motion picture and television development among taxpayers in order of priority based upon the date of filing of an application for allocation of the independent film production credit with such office within each application period. If the commissioner of economic development determines that the aggregate amount of tax credits available for an application period under paragraph one of this subdivision have been previously allocated, and determines that the pending applications from eligible applicants for the other application period in such calendar year is insufficient to utilize the balance of unallocated tax credits for such period, then such commissioner may allocate to productions eligible under such paragraph any credits that remain unallocated for such period pursuant to paragraph two of this subdivision. Provided, however, the total amount of allocated credits applied in any calendar year shall not exceed the aggregate amount of tax credits allowed for such year under this section.

(f) (1) The commissioner of economic development shall reduce by one-half of one percent the amount of credit allowed to a taxpayer and this reduced amount shall be reported on a certificate of tax credit issued pursuant to this section and the regulations promulgated by the commissioner of economic development to implement this credit program.

(2) By January thirty-first of each year, the commissioner of economic development shall report to the comptroller the total amount of such reductions of tax credit during the immediately preceding calendar year. On or before March thirty-first of each year, the comptroller shall transfer without appropriations from the general fund to the empire state entertainment diversity job training development fund established under section ninety-seven-ff of the state finance law an amount equal to the total amount of such reductions reported by the commissioner of

economic development for the immediately preceding calendar year.

(g) Credit recapture. If a certificate of tax credit issued by the department of economic development pursuant to this section is revoked by such department because the taxpayer does not meet the eligibility requirements of this section, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

*** § 25. Disclosure of certain transactions and related information.**

(a) (1) Every taxpayer, or person as defined in section seven thousand seven hundred one of the internal revenue code, required to file a disclosure statement with the internal revenue service pursuant to section six thousand eleven of the internal revenue code, or the regulations promulgated thereunder, related to a reportable transaction or a listed transaction, as those terms are defined in such section or regulations, must attach a duplicate of such disclosure statement to the return or report required to be filed by such taxpayer or person for the taxable year under article nine, nine-A, twenty-two or thirty-three of this chapter, and provide such other information related to such disclosure as prescribed by the commissioner. Such disclosure shall be made notwithstanding that one member of an affiliated group, as defined by section fifteen hundred four of the internal revenue code, may file such disclosure statement with the internal revenue service on behalf of its affiliates including such taxpayer or person.

(2) Every taxpayer or such person who participates in a New York reportable transaction for a taxable year must disclose such participation with its return or report required to be filed under article nine, nine-A, twenty-two or thirty-three of this chapter for the taxable year in a form prescribed by the commissioner, and provide such other information related to such transaction as prescribed by the commissioner. A New York reportable transaction is a transaction that has the potential to be a tax avoidance transaction as determined by the commissioner.

(3) The commissioner may in his discretion prescribe, by regulation, New York reportable transactions.

(4) Provided the commissioner has prescribed regulations pursuant to paragraph three of this subdivision the commissioner is authorized to designate specific transactions that are the same as, or substantially similar to, transactions that the commissioner has determined to be tax avoidance transactions. The provisions of article two of the state administrative procedure act shall not apply to the designation of a specific transaction as a tax avoidance transaction; provided, however, that the commissioner shall designate any such transaction by notice or other form of published guidance.

(b)(1) Every person required to make and file a statement or return pursuant to section six thousand one hundred eleven of the internal revenue code must file a duplicate of such statement or return, including all documentation submitted to the internal revenue service in connection with such statement or return, with the commissioner if any of the following conditions apply:

- (A) the person is organized in this state,
- (B) the person is doing business in this state,
- (C) the person is deriving income in this state, or

(D) (i) the list required to be maintained by such person pursuant to section six thousand one hundred twelve of the internal revenue code identifies or is required to identify a taxpayer subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter, and

(ii) such person is a material advisor, as defined in section six thousand one hundred eleven of the internal revenue code, who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction.

(2) Such duplicate statement or return must be filed within sixty days of the later of:

(A) the date required for filing the statement or return with the internal revenue service,

(B) the date that any of the conditions described in paragraph (1) of this subdivision first applies, or

(C) ninety days after the enactment of this section.

(c) Every person who is required to maintain a list of persons pursuant to section six thousand one hundred twelve of the internal revenue code, or the regulations promulgated thereunder, must maintain a

duplicate of such list if any of the conditions described in paragraph one of subdivision (b) of this section applies to such person and must furnish a copy thereof to the commissioner within twenty days after written request is made for such list by the commissioner.

(d) Every person required by this section to disclose any transaction, file any duplicate return, or maintain any list shall retain all relevant correspondence, memoranda, notes, valuation studies, meeting minutes, spreadsheets, models, opinions, records required to be retained pursuant to section six thousand eleven of the internal revenue code, or the regulations promulgated thereunder, and all other records or documents related to the disclosure, filing and list maintenance requirements of this section for six years and must make such information available for inspection by the commissioner in connection with any examination.

(e) The filing, disclosure and retention requirements of this section shall be in addition to any other filing, disclosure or retention requirements, general or specific, provided by law. The commissioner may require electronic filing or disclosure of any or all submissions required under this section, shall have the authority to prescribe whether a signature, including an electronic signature, is required on any or all filings or disclosures under this section. If an electronic signature is so required, it shall be in a form consistent with the provisions of the electronic signatures and records act of the state technology law.

(f)(1) The penalties imposed for a violation of subdivision (a) of this section are contained in subsection (x) of section six hundred eighty-five and subsection (p) of section one thousand eighty-five of this chapter.

(2) The penalties imposed for a violation of subdivision (b) of this section are contained in subsection (y) of section six hundred eighty-five and subsection (q) of section one thousand eighty-five of this chapter.

(3) The penalties imposed for a violation of subdivision (c) of this section are contained in subsection (z) of section six hundred eighty-five and subsection (r) of section one thousand eighty-five of this chapter.

* NB Repealed July 1, 2029

§ 26. Security training tax credit. (a) Allowance of credit. A taxpayer, which is subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter and which is a qualified building owner, shall be allowed a credit against such tax. The amount of the credit allowed under this section shall equal the sum of the number of qualified security officers providing protection to a building or buildings owned by the taxpayer multiplied by three thousand dollars. Provided, however, that in the case of a worker not so employed for a full year, such amount shall be prorated to reflect the length of such employment under regulations of the commissioner.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Qualified building owner" means a building owner whose building entrances, exits and common areas are protected by security personnel, licensed under article seven-A of the general business law, whether or not such security personnel are employed directly by the building owner or indirectly through a contractor.

(2) "Qualified security training program" means a program for residential and commercial building security officers which is designed to: improve observation, detection and reporting skills, improve coordination with local police, fire and emergency services; provide and improve skills and working knowledge of advanced security technology including surveillance systems and access control procedures; require at least forty hours of training including three hours of training devoted to terrorism awareness; and has been certified as a qualified program and approved by the state office of homeland security pursuant to section seven hundred nine of the executive law.

(3) "Security officers" means security officers, registered under article seven-A of the general business law, responsible for the safety and security of tenants and occupants of commercial buildings over five hundred thousand square feet whether employed directly by a building owner or indirectly through a contractor.

(4) "Qualified security officers" are security officers who: (i) are employed in positions which are under a legally binding written agreement, including a service contract between qualified building

owners and security contractors, enforceable by employees, that provides for a minimum hourly wage rate of at least nine dollars fifty cents for the calendar year two thousand five; nine dollars eighty-five cents for the calendar year two thousand six; and ten dollars eighty-five cents for the calendar year two thousand seven and thereafter; and (ii) have completed a qualified security training program as set forth in this section.

(c) Scope of credit. The credit provided for in subdivision (a) of this section shall be allowed for any taxable year in which costs relating to security personnel are paid or incurred.

(d) Credit certification. Upon application by a taxpayer, the state office of homeland security may issue a credit certification where the taxpayers meet the standards established in paragraph two of this subdivision and have demonstrated that they have provided the appropriate training, or, within the year, will provide the appropriate training to all employees for whom they will claim the credit.

(e) The director of the office of homeland security in consultation with the commissioner of taxation and finance, shall promulgate rules and regulations necessary to implement this program.

(f) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) article 9: section 187-n.
- (2) article 9-A: section 210-B: subdivision 21.
- (3) article 22: section 606: subsection (ii).
- (4) article 33: section 1511: subdivision (x).

§ 27. Suspension of tax-exempt status of terrorist organizations. 1.

An organization that is removed from the tax-exempt organizations list by the internal revenue service pursuant to subsection (p) of section 501 of title 26 of the United States Code shall not be exempt from any tax, fee or other imposition administered by the commissioner, and it shall also not be an exempt organization with respect to any sale, transfer or assignment, beginning on the later of November eleventh, two thousand three, or the date that the internal revenue service publishes revocation of the organization's tax-exempt status. In the case of any personal income or corporate franchise tax imposed under or pursuant to

the authority of this chapter, such revocation of exempt status shall apply with respect to the entire taxable year in which the date of revocation occurs and to subsequent taxable years.

2. An organization whose tax-exempt status has been revoked pursuant to subdivision one of this section and whose tax-exempt status is later restored by the internal revenue service shall be required to submit a new application or applications and be approved before any such status shall be restored with respect to any such tax, fee or other imposition administered by the commissioner.

3. An organization whose tax-exempt status is suspended pursuant to subdivision one of this section shall have the right to appeal the determination using the procedure prescribed by article forty of this chapter or otherwise prescribed pursuant to this chapter, provided that the organization cannot challenge the merits of the determination made by the internal revenue service.

4. If an organization makes a sale of property or services on or after the date its exempt status has been revoked under subdivision one of this section, such sale shall be taxable; and the organization shall be required to collect, pay or pay over any tax due on any such sale on or after such date. If such organization fails to collect tax on any such sale, the purchaser shall owe any tax due and shall pay it directly to the commissioner in accordance with applicable law; provided, however, that, if such purchaser does not have knowledge that such organization's exempt status has been revoked, then such purchaser shall not be liable for any penalty or interest for failing to file a return or to pay such tax if such purchaser files such a return and pays such tax due within thirty days of the date that such purchaser learns that the tax is owed on such purchase.

*** § 28. Empire state commercial production credit.** (a) Allowance of credit. (1) A taxpayer which is a qualified commercial production company, or which is a sole proprietor of a qualified commercial production company, and which is subject to tax under article nine-A or

twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of this section, to be computed as provided in this section. Provided, however, to be eligible for such credit, at least seventy-five percent of the production costs (excluding post production costs) paid or incurred directly and predominantly in the actual filming or recording of the qualified commercial must be costs incurred in New York state. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty-nine.

(2) The state has annually seven million dollars in total tax credits to disburse to all eligible commercial production companies. The seven million dollars in total tax credits shall be allocated according to subparagraphs (i) and (ii) of this paragraph:

(i) The state annually will disburse four million of the total seven million in tax credits to all eligible production companies who film or record qualified commercials within the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law. The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of twenty percent of the qualified production costs paid or incurred in the production of a qualified commercial, provided that the qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services within the state in the production of such qualified commercial. To be eligible for said credit the total qualified production costs of a qualified production company must be greater than five hundred thousand dollars in the aggregate during the calendar year. Such credit will be applied to qualified production costs exceeding five hundred thousand dollars in a calendar year.

(ii) The state annually will disburse three million of the total seven million in tax credits to all eligible production companies who film or record a qualified commercial outside of the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law; provided, however, that if, after July thirty-first the state reviews all applications from eligible production companies who film or record a qualified commercial outside of the metropolitan commuter district for a given year, tax credits remain

unallocated under this subparagraph, those credits shall be allotted to the credits set forth in subparagraph (i) of this paragraph for use consistent with the purposes of such subparagraph. The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent of the qualified production costs paid or incurred in the production of a qualified commercial, provided that the qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services within the state in the production of such qualified commercial. To be eligible for said credit the total qualified production costs of a qualified production company must be greater than one hundred thousand dollars in the aggregate during the calendar year. Such credit will be applied to all qualified production costs in a calendar year.

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this section or used in the calculation of the credit provided for under this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

(4) Notwithstanding any provisions of this section to the contrary, a corporation or partnership, which otherwise qualifies as a qualified commercial production company, and is similar in operation and in ownership to a business entity or entities taxable, or previously taxable, under section one hundred eighty-three or one hundred eighty-four or former section one hundred eighty-five of article nine; article nine-A or thirty-three of this chapter or which would have been subject to tax under article twenty-three of this chapter (as such article was in effect on January first, nineteen hundred eighty) or which would have been subject to tax under article thirty-two of this chapter (as such article was in effect on December thirty-first, two thousand fourteen) or the income or losses of which is or was includable under article twenty-two of this chapter shall not be deemed a new or separate business, and therefore shall not be eligible for empire state commercial production benefits, if it was not formed for a valid business purpose, as such term is defined in clause (D) of subparagraph one of paragraph (o) of subdivision nine of section two hundred eight of this chapter and was formed solely to gain empire state commercial

production credit benefits.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post-production) of a qualified commercial.

(2) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post-production) of a qualified commercial. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified commercial and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines who are employed by a qualified company and musicians). "Production costs" generally include technical and crew production costs, such as expenditures for commercial production facilities and/or location costs, or any part thereof, film, audiotape, videotape or digital medium, props, makeup, wardrobe, commercial processing, camera, sound recording, scoring, set construction, lighting, shooting, editing and meals. For purposes of this section, "post production costs" include the production of original content for a qualified commercial employing techniques traditionally used in post-production for visual effects, graphic design, animation, and musical composition. However, where the commercial consists in its entirety of techniques such as visual effects, graphic design, or animation, such costs incurred in the production of the commercial, when occurring in New York, shall be deemed qualified production costs for the purposes of this section. Provided further, however, that "post production costs" shall not include the editing of previously produced content for a qualified commercial.

(3) "Qualified commercial" means an advertisement of any length that is recorded on film, audiotape, videotape or digital medium in New York for multi-market distribution by way of radio, television networks, cable, satellite, motion picture theaters or internet. "Qualified commercial" shall not include (i) news or current affairs program,

interview or talk program, network promos, i.e., commercials promoting television series or movies, "how-to" (i.e., instructional) commercial or program, commercial or program consisting entirely of stock footage, trailers promoting theatrical films, sporting event or sporting program, game show, award ceremony, daytime drama (i.e., daytime "soap opera"), or "reality" program, or (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production (reporting of books, commercials, etc. with respect to sexually explicit conduct).

(4) "Qualified commercial production company" is a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified commercial and controls the production of the qualified commercial and is not the distributor, or the contracting entity for production of such commercial, nor is a variable interest entity of such distributor or contracting entity.

(c) The department of economic development shall submit, on or before December first of each year, to the governor, the director of the division of the budget, the temporary president of the senate, and the speaker of the assembly an annual report including, but not limited to, the following information regarding the previous calendar year:

(1) the total dollar amount of credits allocated, the name and address of each qualified commercial production company allocated credits under this section, the total amount of credits allocated to each qualified commercial production company, the total amount of qualified production costs and production costs for each qualified commercial production company, and the estimated number of employees, credit-eligible man hours, and credit-eligible wages associated with each qualified commercial production company allocated credits under this section;

(2) for qualified commercial production companies that were allocated credit pursuant to subparagraph (i) of paragraph two of subdivision (a) of this section: the name and address of each qualified commercial production company, the total dollar amount of credits allocated, the total amount of credits allocated to each qualified commercial production company, total qualified production costs and production costs for each qualified production company, and the estimated number of employees, credit-eligible man hours, and credit-eligible wages

associated with each qualified commercial production company that filmed or recorded a qualified commercial within the district;

(3) for qualified commercial production companies that were allocated credit pursuant to subparagraph (ii) of paragraph two of subdivision (a) of this section: the name and address of each qualified commercial production company, the total dollar amount of credits allocated, the total amount of credits allocated to each qualified commercial production company, total qualified production costs and production costs for each qualified production company, and the estimated number of employees, credit-eligible man hours, and credit-eligible wages associated with each qualified commercial production company that filmed or recorded a qualified commercial outside the district; and

(4) the amount of credits reallocated to all eligible qualified commercial production companies pursuant to subparagraph (ii) of paragraph two of subdivision (a) of this section.

(5) The report may also include any recommendations for changes in the calculation or administration of the credit, recommendations regarding continuing modification or repeal of this credit, and any other information regarding this credit as may be useful and appropriate.

(d) Cross-references. For application of the credit provided for in this section, see the following provision of this chapter:

(1) article 9-A: section 210-B: subdivision 23.

(2) article 22: section 606: subsection (jj).

* NB There are 2 § 28's

*** § 28. Biofuel production credit.** (a) General. A taxpayer subject to tax under article nine, nine-A or twenty-two of this chapter shall be allowed a credit against such tax pursuant to the provisions referenced in subdivision (d) of this section. The credit (or pro rata share of earned credit in the case of a partnership) for each gallon of biofuel produced at a biofuel plant on or after January first, two thousand six shall equal fifteen cents per gallon after the production of the first forty thousand gallons per year presented to market. The credit under this section shall be capped at two and one-half million dollars per taxpayer per taxable year for up to no more than four consecutive taxable years per biofuel plant. If the taxpayer is a partner in a

partnership or shareholder of a New York S corporation, then the cap imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed two and one-half million dollars. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

(b) Definitions. For the purpose of this section, the following terms shall have the following meanings:

(1) "Biofuel" means a fuel which includes biodiesel and ethanol. The term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751-02. The term "ethanol" shall mean ethyl alcohol manufactured in the United States and its territories and sold (i) for fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the federal bureau of alcohol, tobacco and firearms for the production of ethanol for fuel, or (ii) as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use. The term "biofuel" may also include any other standard approved by the New York state energy and research development authority.

(2) "Biofuel plant" means a commercial facility located in New York state at which one or more biofuels are produced.

(c) Reporting requirements. A taxpayer wishing to claim a credit under this section shall annually certify to the commissioner (i) that biofuel produced at the eligible biofuel plant meets all existing standards for biofuel and (ii) the amount of biofuel produced at the eligible biofuel plant during a taxable year.

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9: Section 187-c.

(2) Article 9-A: Section 210-B, subdivision 24.

(3) Article 22: Section 606, subsections (i) and (jj).

* NB There are 2 § 28's

*** § 29. Mandatory electronic filing and payment.** (a) For purposes of this section, the following terms have the specified meanings:

(1) "Authorized tax document" means a tax document which the commissioner has authorized to be filed electronically, provided however that any return or report that includes one or more tax documents that cannot be filed electronically shall not be deemed to be an authorized tax document for purposes of this section.

(2) "Electronic" means computer technology.

(3) "Original tax document" means a tax document that is filed during the calendar year for which that tax document is required or permitted to be filed.

(4) "Tax" means any tax or other matter administered by the commissioner pursuant to this chapter or any other provision of law.

(5) "Tax document" means a return, report or any other document relating to a tax or other matter administered by the commissioner.

(6) "Tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation, any authorized tax document. For purposes of this section, the term "tax return preparer" also includes a payroll service.

(7) "Tax software" means any computer software program intended for tax return preparation purposes. For purposes of this section, the term "tax software" includes, but is not limited to, an off-the-shelf software program loaded onto a tax return preparer's or taxpayer's computer, an online tax preparation application, or a tax preparation application hosted by the department.

(b) (1) If a tax return preparer prepared more than one hundred original tax documents during any calendar year beginning on or after January first, two thousand seven, and if, in any succeeding calendar year that tax return preparer prepares one or more authorized tax documents using tax software, then, for that succeeding calendar year and for each subsequent calendar year thereafter, all authorized tax documents prepared by that tax return preparer must be filed electronically, in accordance with instructions prescribed by the commissioner.

(2) If a tax return preparer prepared authorized tax documents for more than ten different taxpayers during any calendar year beginning on or after January first, two thousand twelve, and if in any succeeding

calendar year that tax return preparer prepares one or more authorized tax documents using tax software, then, for such succeeding calendar year and for each subsequent calendar year thereafter, all authorized tax documents prepared by that tax return preparer must be filed electronically, in accordance with instructions prescribed by the commissioner.

(c) If a taxpayer does not utilize a tax return preparer to prepare an authorized tax document, but instead prepares that document itself using tax software, then all authorized tax documents prepared by the taxpayer using tax software must be filed electronically, in accordance with instructions prescribed by the commissioner.

(d) The commissioner may require tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section to be paid by the taxpayer electronically, in accordance with instructions prescribed by the commissioner.

(e) Failure to electronically file or electronically pay. (1) If a tax return preparer is required to file authorized tax documents electronically pursuant to subdivision (b) of this section, and that preparer fails to file one or more of those documents electronically, then that preparer will be subject to a penalty of fifty dollars for each failure to electronically file an authorized tax document, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) If a taxpayer is required to electronically file any authorized tax documents or electronically pay any tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section, and that taxpayer fails to electronically file one or more of those tax documents or electronically pay one or more of those liabilities or other amounts due, then that taxpayer will be subject to a penalty of fifty dollars for each failure to electronically file any authorized tax document or electronically pay any tax, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. In addition, any taxpayer that fails to electronically file an authorized tax document for any tax will be subject to the penalty imposed under the applicable article for the failure to file a return or

report, whether a paper return or report has been filed or not. Provided, however, that this subdivision shall not apply to an individual taxpayer with respect to his or her personal tax documents that are required by or pursuant to the authority of article twenty-two, thirty, thirty-A or thirty-B of this chapter.

(3) The penalties provided for by this subdivision must be paid upon notice and demand, and will be assessed, collected and paid in the same manner as the tax to which the electronic transaction relates. However, if the electronic transaction relates to another matter administered by the commissioner, then the penalty will be assessed, collected and paid in the same manner as prescribed by article twenty-seven of this chapter.

(4) If a taxpayer or tax return preparer fails to electronically file an authorized tax document when required to do so pursuant to subdivision (b) or (c) of this section, the taxpayer shall not be eligible to receive interest on any overpayment in accordance with the overpayment provisions of this chapter until such document is filed electronically. Provided, however, that this subdivision shall not apply to an individual taxpayer with respect to his or her personal tax documents that are required by or pursuant to the authority of article twenty-two, thirty, thirty-A or thirty-B of this chapter.

(f) The provisions of sections nine and ten of this chapter are not affected by this section and will remain in full force and effect.

(g) The commissioner is authorized to promulgate any regulations necessary to implement this section.

* NB Effective until December 31, 2029

* § 29. Mandatory electronic filing and payment. (a) For purposes of this section, the following terms have the specified meanings:

(1) "Authorized tax document" means a tax document which the commissioner has authorized to be filed electronically.

(2) "Electronic" means computer technology.

(3) "Original tax document" means a tax document that is filed during the calendar year for which that tax document is required or permitted to be filed.

(4) "Tax" means any tax or other matter administered by the commissioner pursuant to this chapter or any other provision of law; provided, however, that the term "tax" does not include the taxes

imposed by, or pursuant to the authority of, articles twenty-two, thirty, thirty-A or thirty-B of this chapter.

(5) "Tax document" means a return, report or any other document relating to a tax or other matter administered by the commissioner.

(6) "Tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation, any authorized tax document. For purposes of this section, the term "tax return preparer" also includes a payroll service.

(7) "Tax software" means any computer software program intended for tax return preparation purposes. For purposes of this section, the term "tax software" includes, but is not limited to, an off-the-shelf software program loaded onto a tax return preparer's or taxpayer's computer, an online tax preparation application, or a tax preparation application hosted by the department.

(b) If a tax return preparer prepared more than one hundred original tax documents during any calendar year beginning on or after January first, two thousand seven, and if, in any succeeding calendar year that tax return preparer prepares one or more authorized tax documents using tax software, then, for that succeeding calendar year and for each subsequent calendar year thereafter, all authorized tax documents prepared by that tax return preparer must be filed electronically, in accordance with instructions prescribed by the commissioner.

(c) If a taxpayer does not utilize a tax return preparer to prepare an authorized tax document during any calendar year beginning on or after January first, two thousand eight, but instead prepares that document itself using tax software, then, for that calendar year and for each subsequent calendar year thereafter, all authorized tax documents prepared by the taxpayer using tax software must be filed electronically, in accordance with instructions prescribed by the commissioner.

(d) Any tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section must be paid by the taxpayer electronically, in accordance with instructions prescribed by the commissioner.

(e) Failure to electronically file or electronically pay. (1) If a tax return preparer is required to file authorized tax documents

electronically pursuant to subdivision (b) of this section, and that preparer fails to file one or more of those documents electronically, then that preparer will be subject to a penalty of fifty dollars for each failure to electronically file an authorized tax document, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) If a taxpayer is required to electronically pay any tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section, and that taxpayer fails to electronically pay one or more of those liabilities or other amounts due, then that taxpayer will be subject to a penalty of fifty dollars for each failure to electronically pay.

(3) The penalties provided for by this subdivision must be paid upon notice and demand, and will be assessed, collected and paid in the same manner as the tax to which the electronic transaction relates. However, if the electronic transaction relates to another matter administered by the commissioner, then the penalty will be assessed, collected and paid in the same manner as prescribed by article twenty-seven of this chapter.

(f) The provisions of sections nine and ten of this chapter are not affected by this section and will remain in full force and effect.

(g) The commissioner is authorized to promulgate any regulations necessary to implement this section.

* NB Effective December 31, 2029

§ 30. Bad check or failed electronic funds withdrawal fee. If, in payment of any amount due under a tax, fee, special assessment or other imposition administered by the commissioner, a person tenders a check or money order to the department, or the department, with the consent of a person, originates an electronic funds withdrawal against the designated bank account, and the check, money order or electronic funds withdrawal, as applicable, is returned without payment, the person must pay a fee to the commissioner of fifty dollars; provided, however, that in the case of an electronic funds withdrawal, the fee will not be paid if the reason for return of the payment is attributable to error of the

department or its originating depository financial institution. The fee must be paid upon notice and demand, and will be assessed, collected and paid in the same manner as the tax, fee, special assessment or other imposition to which the payment relates. All fees collected by the commissioner pursuant to this subdivision must be deposited monthly, to the credit of the general fund of the state. The commissioner will maintain a system of accounts showing the amount of money collected from the fee imposed by this section.

*** § 31. Excelsior jobs program credit.** (a) General. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section. The amount of the credit, allowable for up to ten consecutive taxable years, is the sum of the following four credit components:

- (1) the excelsior jobs tax credit component;
- (2) the excelsior investment tax credit component;
- (2-a) the excelsior child care services tax credit component;
- (3) the excelsior research and development tax credit component; and
- (4) the excelsior real property tax credit component.

(b) To be eligible for the excelsior jobs program credit, the taxpayer shall have been issued a "certificate of tax credit" by the department of economic development pursuant to subdivision four of section three hundred fifty-four of the economic development law, which certificate shall set forth the amount of each credit component that may be claimed for the taxable year. A taxpayer may claim such credit for ten consecutive taxable years commencing in the first taxable year that the taxpayer receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later, provided that no tax credits may be allowed for taxable years beginning on or after January first, two thousand forty. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. Such certificate must be attached to the taxpayer's return. No cost or expense paid or incurred by the taxpayer shall be the basis for more than one component of this credit or any other tax credit, except as provided in section three hundred fifty-five

of the economic development law.

(c) Election of credit. A taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the investment tax credit provided for under subdivision one of section two hundred ten-B or subsection (a) of section six hundred six of this chapter, may claim either the excelsior investment tax credit component or the investment tax credit, but not both with regard to a particular piece of property. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of this article, as added by chapter one of the laws of two thousand three, may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property. The election to claim the excelsior investment tax credit component, the investment tax credit or the brownfield tangible property credit component, with regard to the same property, is irrevocable.

(d) Information sharing. Notwithstanding any provision of this chapter, employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange:

(1) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the excelsior jobs program;

(2) information regarding the component or components of the credit applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for the credit or who are claiming the credit; and

(3) information contained in or derived from credit claim forms submitted to the department and applications for admission into the excelsior jobs program.

Other than the information required to be contained in the report issued pursuant to subdivision (e) of this section, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(e) Excelsior jobs program credit report. (1) The commissioner must

publish an excelsior jobs program tax credit report annually by June thirtieth. The first report must be published by June thirtieth, two thousand twelve.

(2) The credit report must contain the following information about the excelsior jobs program tax credit claimed under this chapter during the previous calendar year:

(i) the name of each taxpayer claiming a credit; provided however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of the credit must be included in the report instead of information about the taxpayer claiming the credit; and

(ii) the amount of each credit component earned by each taxpayer; provided however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the amount of credit earned by each entity must be included in the report instead of information about the taxpayer claiming the credit.

(3) The credit report may also contain any other information received by the commissioner with regard to the excelsior jobs program credit that the commissioner deems to be useful in evaluating the use of the credit. The information included in the credit report will be based on the information filed with the department during the previous calendar year, to the extent that it is practicable to use that information.

(f) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of economic development under article seventeen of the economic development law is revoked by such department because the taxpayer does not meet the eligibility requirement set forth in subdivision six of section three hundred fifty-three of the economic development law, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(f-1) Credit recapture for unrealized job creation. If, in any given year, a taxpayer who has satisfied the eligibility criteria specified in section three hundred fifty-three of the economic development law

realizes job creation less than the estimated amount, the credit described in this section allowed in that year shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

(g) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(2) article 9-A: section 210-B: subdivision 31.

(3) article 22: section 606: subsection (qq).

(4) article 33: section 1511: subdivision (y).

* NB There are 2 § 31's

*** § 31. Empire state film post production credit.** (a) Allowance of credit. (1) A taxpayer which is a qualified film production company, and which is subject to tax under article nine-A or twenty-two of this chapter, unless eligible for the credit under section twenty-four of this article with respect to the qualified film, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of this section to be computed as provided in this subdivision.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent and the qualified post production costs paid in the production of a qualified film at a qualified post production facility located within the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law or thirty-five percent and the qualified post production costs paid in the production of a qualified film at a qualified post production facility located elsewhere in the state.

(3) (i) A taxpayer shall not be eligible for the credit established by this section for qualified post production costs, excluding the costs for visual effects and animation, unless the qualified post production costs, excluding the costs for visual effects and animation, at a qualified post production facility meet or exceed one million dollars or seventy-five percent of the total post production costs, excluding the costs for visual effects and animation, paid or incurred in the post production of the qualified film at any post production facility,

whichever is less. (ii) A taxpayer shall not be eligible for the credit established by this section for qualified post production costs which are costs for visual effects or animation unless the qualified post production costs for visual effects or animation at a qualified post production facility meet or exceed five hundred thousand dollars or ten percent of the total post production costs for visual effects or animation paid or incurred in the post production of a qualified film at any post production facility, whichever is less. (iii) A taxpayer may claim a credit for qualified post production costs excluding the costs for visual effects and animation, and for qualified post production costs of visual effects and animation, provided that the criteria in subparagraphs (i) and (ii) of this paragraph are both satisfied. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

(4) No qualified post production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this section or used in the calculation of the credit provided for under this section shall be used by such taxpayer to claim any other credit allowed pursuant to this chapter.

(5) If the amount of the credit is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the first taxable year in which the credit may be claimed and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit is at least five million dollars, the credit shall be claimed over a three year period beginning in the first taxable year in which the credit may be claimed and in the next two succeeding taxable years, with one-third of the amount of the credit allowed being claimed in each year. Provided, however, in the case of a qualified film for which the taxpayer filed an initial application on or after January first, two thousand twenty-five, the credit shall be claimed for the taxable year in which such qualified film is completed.

(6) For the period two thousand fifteen through two thousand thirty-six, in addition to the amount of credit established in paragraph two of this subdivision, a taxpayer shall be allowed a credit equal to the product (or pro rata share of the product, in the case of a member of a partnership) of ten percent and the amount of wages or salaries

paid to individuals directly employed (excluding those employed as writers, directors, composers, producers and performers, other than background actors with no scripted lines) for services performed by those individuals in one of the counties specified in this paragraph in connection with the post production work on a qualified film with a minimum budget of five hundred thousand dollars at a qualified post production facility in one of the counties listed in this paragraph. For purposes of this additional credit, the services must be performed in one or more of the following counties: Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or Yates.

(b) Definitions. As used in this section the following terms shall have the following meanings:

(1) "Qualified film production company" and "qualified film" shall have the same meaning as are ascribed to such terms by section twenty-four of this article.

(2) "Qualified production costs" means production of original content for a qualified film employing traditional, emerging and new workflow techniques used in post-production for picture, sound and music editorial, rerecording and mixing, visual effects, graphic design, original scoring, animation, and musical composition in the state; but shall not include the editing of previously produced content for a qualified film.

(3) "Post production facility" means a building and/or complex of buildings and their improvements on which film are intended to be post produced.

(4) "Qualified post production facility" means a post production facility located in the state, engaged in finishing a qualified film.

(c) Notwithstanding any other provision of law to the contrary, the aggregate amount of tax credits available under this section shall not exceed the amounts allowed pursuant to paragraph four of subdivision (e) of section twenty-four of this article and shall be allocated in the

same manner as provided for in paragraph one of subdivision (e) of section twenty-four of this article.

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B: subdivision 32.

(2) article 22: section 606: subsection (qq).

(e) With regard to certificates of tax credit issued on or after January first, two thousand twenty, the commissioner of economic development shall reduce by one-quarter of one percent the amount of credit allowed to a taxpayer and this reduced amount shall be reported on a certificate of tax credit issued pursuant to this section and the regulations promulgated by the commissioner of economic development to implement this credit program. Such reductions in tax credit shall be deposited into the empire state entertainment diversity job training development fund as provided in subdivision (f) of section twenty-four of this article.

(f) Credit recapture. If a certificate of tax credit issued by the department of economic development pursuant to this section is revoked by such department because the taxpayer does not meet the eligibility requirements of this section, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

* NB There are 2 § 31's

§ 32. Registration of tax return preparers. (a) For purposes of this section, the following terms have the specified meanings:

(1) "Attorney" means an attorney admitted to practice law in New York state or one or more of the other states or jurisdictions of the United States.

(2) "Certified public accountant" means an accountant licensed pursuant to section seventy-four hundred four of the education law or a similar law of one or more of the other states or jurisdictions of the United States.

(3) "Commercial tax return preparer" means a tax return preparer who:

(A) prepared ten or more returns for compensation in the preceding

calendar year and will prepare at least one return for compensation during the current calendar year; or (B) prepared fewer than ten returns in the preceding calendar year but will prepare ten or more returns for the current calendar year.

(4) "Commercial tax return preparation business" means an entity that employs individuals who prepare tax returns and that meets the thresholds described in paragraph three of this subdivision.

(5) "Creditor" means any person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan.

(6) "Facilitator" means a person who individually or in conjunction or cooperation with another person: (a) solicits the execution of, processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check, (b) serves or collects upon a refund anticipation loan or refund anticipation check; or (c) in any other manner facilitates the making of a refund anticipation loan or refund anticipation check. This term excludes any employees of a facilitator who provide only clerical or other comparable support services to such facilitator.

(7) "Electronic" means computer technology.

(8) "Enrolled agent" means an agent enrolled to practice before the internal revenue service pursuant to section 10.4 of subpart A of part ten of title thirty-one of the code of federal regulations.

(9) "Public accountant" means an accountant licensed pursuant to section seventy-four hundred five of the education law or a similar law of one or more of the other states or jurisdictions of the United States.

(10) "Refund anticipation check" means a check, stored value card, or other payment mechanism which: (a) represents the proceeds of a tax refund; (b) was issued by a depository institution or other person that received a direct deposit of the tax refund or tax credits; and (c) a fee or other consideration is paid for such payment mechanism.

(11) "Refund anticipation loan" means a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of an income tax refund or tax credits. A refund anticipation loan also includes any sale, assignment, or purchase of tax refund at a discount or for a fee, whether or not the amount is required to be repaid to the buyer or assignee if the internal revenue service or the

department denies or reduces the amount of the tax refund.

(12) "Return" means a return or report relating to a tax administered by the commissioner.

(13) "Tax" means any tax, fee, special assessment or other imposition administered by the commissioner.

(14) "Tax return preparer" means an individual who prepares a substantial portion of any return for compensation. Employees of a tax return preparer or a commercial tax return preparation business who prepare returns for clients of that preparer or preparation business, as applicable, and partners who prepare returns for clients of a partnership engaged in a commercial tax return preparation business, are all "tax return preparers" for purposes of this section. Excluded from the definition of "tax return preparer" are attorneys, public accountants, enrolled agents, and certified public accountants, and employees of an attorney, public accountant, enrolled agent, certified public accountant, or firm thereof preparing returns under the supervision of such attorneys, public accountants, certified public accountants and enrolled agents or firms thereof. Also excluded are volunteer tax preparers, employees of a business or partners in a partnership whose job responsibilities include preparation of only the business' or partnership's returns, and employees of a tax return preparer or a commercial tax return preparation business who provides only clerical or other comparable services.

(b)(1) Each tax return preparer, who will prepare at least one return in a calendar year, and each facilitator, who will facilitate the making of a refund anticipation loan or refund anticipation check, must register electronically with the department for that calendar year, in accordance with instructions prescribed by the commissioner.

(2)(A) Upon completion of the registration process, each tax return preparer and facilitator will be issued a tax preparer or facilitator registration certificate. If an individual acts as both a tax return preparer and a facilitator, one registration certificate shall indicate both activities.

(B) In accordance with instructions prescribed by the commissioner, each tax return preparer and facilitator will also be assigned a unique identification number by the department, which must be used by the tax return preparer and facilitator on each return which the tax return

preparer is required to sign and each refund anticipation loan and refund anticipation check the facilitator is required to sign.

(C) If a tax return preparer or facilitator is an employee or prospective employee of a tax return preparer, a commercial tax return preparation business, or a facilitator, the tax return preparer, commercial tax return preparation business or facilitator must ensure that the employee or prospective employee is properly registered with the department and possesses a valid tax preparer or facilitator registration certificate. If an individual acts as both a tax return preparer and a facilitator one registration certificate shall indicate both activities.

(3) Each registered tax return preparer and facilitator must electronically re-register with the department annually, in accordance with instructions prescribed by the commissioner. If, at any time during the year following registration or re-registration, as applicable, any information provided by the tax return preparer or facilitator upon registration or re-registration is no longer correct, the tax return preparer or facilitator must update his or her information in accordance with instructions prescribed by the commissioner.

(4) Each tax return preparer preparing any return must sign the document and include the unique identification number specified in paragraph two of this subdivision, in accordance with instructions prescribed by the commissioner.

(c)(1) Each commercial tax return preparer must electronically pay an annual fee of one hundred dollars to the department, in accordance with instructions prescribed by the commissioner. Registration of a commercial tax return preparer is not complete until payment of the fee is made.

(2) All fees received by the commissioner pursuant to this subdivision, reduced by those amounts the commissioner determines are necessary to cover administrative costs to administer the registration program prescribed by this section and the costs of any reimbursements to commercial tax return preparers that may be required due to duplicative fee payments under this subdivision, must be deposited monthly to the credit of the general fund of the state. The commissioner will maintain a system of accounts showing the amount of money collected and disbursed from the fee imposed by this subdivision.

(d) The issuance of a tax preparer or facilitator registration certificate to provide tax preparation services or refund anticipation loan services is not, and must not be advertised as, an endorsement by the department of the tax return preparer or the facilitator, or his or her qualifications or the services rendered by him or her.

(e) A tax return preparer who has not registered with the department, or a commercial tax return preparer who has not paid the required registration fee, will not be allowed to represent his or her clients before the division of taxation or the division of tax appeals. This sanction is in addition to any penalties which may be imposed pursuant to subdivision (f) of this section.

(f) (1) A tax return preparer or facilitator shall not: (A) charge or impose any fee, charge or other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or bank that provided the loan or check;

(B) Engage in unfair or deceptive acts or practices in the facilitating of a refund anticipation check or a refund anticipation loan, including making any oral statements contradicting any of the information required to be disclosed under the Taxpayer Bill of Rights as set forth in sections three hundred seventy-one through three hundred seventy-three of the general business law;

(C) Directly or indirectly arrange for a third party to charge any interest, fee or charge related to a refund anticipation loan or refund anticipation check;

(D) Include any of the following provisions in any documents provided or signed to obtain a refund anticipation loan or refund anticipation check, including the loan application or agreement: (i) a hold harmless clause; (ii) a confession of judgment clause; (iii) a waiver of the right to a jury trial; (iv) any assignment of or order for payment of wages or other compensation for services; (v) a waiver of any provision of the Taxpayer Bill of Rights, as set forth in sections three hundred seventy-one through three hundred seventy-three of the general business law; or (vi) a waiver of the right to injunctive, declaratory, other equitable relief, or relief on a classwide basis. Any aforementioned waivers shall be deemed null, void and of no effect;

(E) Take or arrange for a creditor to take a security interest in any

property interest of the taxpayer other than the proceeds of the tax refund to secure payment of a refund anticipation loan;

(F) Directly or indirectly, individually or in conjunction or cooperation with another person, engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee;

(G) Make a misrepresentation of fact in obtaining or attempting to obtain a registration; or

(H) Engage in any other action prohibited by rules promulgated by the commissioner.

(2) If a tax return preparer violates any one of the provisions provided for in this subdivision, then the tax return preparer must pay a penalty of five hundred dollars for each such violation, in addition to any other penalties provided for in this section.

(g) (1) The department shall issue a notice to a tax return preparer or facilitator for failure to register or re-register with the department pursuant to paragraph one or three of subdivision (b) of this section, which shall set forth a fifteen day period to cure the failure to register or re-register. The commissioner is authorized to send such notice electronically to the tax return preparer's or facilitator's online services account. A tax return preparer or facilitator who fails to register or re-register in accordance with such notice must pay a penalty of two hundred fifty dollars. The penalty can be waived only for good cause shown by the tax return preparer or facilitator.

(2) The department shall issue a notice to a commercial tax return preparer who fails to pay the fee as required in paragraph one of subdivision (c) of this section, for a calendar year, which shall set forth a fifteen day period to cure the failure to pay the fee. The commissioner is authorized to send such notice electronically to the commercial tax return preparer's online services account. A commercial tax return preparer who fails to pay the fee in accordance with such notice must pay a penalty of fifty dollars for each return the commercial tax return preparer has filed with the department in that calendar year. The maximum penalty that may be imposed under this paragraph on any commercial tax return preparer during any calendar year must not exceed five thousand dollars. The penalty can be waived only for good cause shown by the commercial tax return preparer.

(3) If a tax return preparer fails to sign his or her name to any return that requires the tax return preparer's signature, or a facilitator fails to sign his or her name to any refund anticipation loan or refund anticipation check facilitation documentation, then the tax return preparer or facilitator must pay a penalty in the amount of two hundred fifty dollars for each failure to so sign. Provided, however, that this penalty can be waived only for good cause shown by the tax return preparer or facilitator.

The maximum penalty imposed under this paragraph on any tax return preparer with respect to returns filed during any calendar year by the tax return preparer, or on any facilitator with respect to any refund anticipation loan or refund anticipation check facilitation documentation completed during any calendar year by the facilitator must not exceed ten thousand dollars. Provided, however, that if a tax return preparer or facilitator has been penalized under this paragraph for a preceding calendar year and again fails to sign his or her name on any return that requires the tax return preparer's signature or again fails to sign his or her name on any refund anticipation loan or refund anticipation check facilitation documentation during a subsequent calendar year, then the penalty under this paragraph for each failure will be five hundred dollars, and no annual cap will apply.

(4) If a tax return preparer or a facilitator fails to include the unique identification number assigned by the department pursuant to subparagraph (B) of paragraph two of subdivision (b) of this section on any return, or any return anticipation loan or return anticipation check facilitation documentation that requires his or her signature, then the tax return preparer or facilitator must pay a penalty of one hundred dollars for each failure to include his or her unique identification number. Provided, however, that this penalty can be waived only for good cause shown by the tax return preparer or facilitator. The maximum penalty imposed under this paragraph on any tax return preparer or facilitator with respect to returns filed during any calendar year must not exceed two thousand five hundred dollars; provided, however, that if a tax return preparer or facilitator has been penalized under this paragraph for a preceding calendar year and again fails to include the unique identification number on one or more returns during a subsequent

calendar year, then the penalty under this paragraph for each failure will be two hundred fifty dollars, and no annual cap will apply.

(5) If a tax return preparer, facilitator or a commercial tax return preparation business employs an individual to prepare tax returns who is not registered with the department and does not possess a valid tax preparer or facilitator registration certificate, then the tax return preparer, facilitator or commercial tax return preparation business, as applicable, will be subject to a penalty of five hundred dollars per occurrence. This penalty can be waived only for good cause shown.

(6) The penalties provided for by this subdivision must be paid upon notice and demand and will be assessed, collected and paid in the same manner as taxes under article twenty-seven of this chapter.

(h) (1) Tax return preparers and facilitators must prominently and conspicuously display a copy of their registration certificate issued pursuant to this section, for the current registration period, at their place of business and at any other location where they provide tax return preparation and/or facilitation services, in an area where taxpayers using their services are able to see and review such registration certificate.

(2) Tax return preparers and facilitators must prominently and conspicuously display at their place of business and at any other location where they provide tax return preparation and/or facilitation services the following documents:

(A) a current price list, in at least fourteen-point type, that includes, but is not limited to, a list of all services offered by the tax return preparer and/or facilitator; the minimum fee charged for each service, including the fee charged for each type of federal or New York state tax return to be prepared and facilitation service to be provided; and a list of each factor that may increase a stated fee and the specific additional fees or range of possible additional fees when each factor applies; and

(B) a copy of the most recent Consumer Bill of Rights Regarding Tax Preparers published by the department pursuant to section three hundred seventy-two of the general business law.

(3) A tax return preparer or facilitator who fails to comply with any of the requirements of this subdivision must pay a penalty of five hundred dollars for the first month of non-compliance and five hundred

dollars for each subsequent month of non-compliance thereafter. The maximum penalty that may be imposed under this subdivision on any tax return preparer or facilitator during any calendar year must not exceed ten thousand dollars. The penalty can be waived only for good cause shown by the tax return preparer or facilitator.

(i) The provisions of this section will apply exclusively to the registration of tax return preparers and facilitators with the department, payment of the registration fee if required by commercial tax return preparers, the signing of returns and use of the unique identification numbers assigned by the department upon registration. Other provisions of this chapter or any other provision of law prescribing additional requirements applicable to tax return preparers or facilitators will not be affected by the provisions of this section except as set forth expressly herein, and will remain in full force and effect.

*** § 33. Correction periods for electronic tax documents and payments.**

(a) For purposes of this section, the following terms have the specified meanings:

(1) "Electronic funds withdrawal" means the process by which the department, with a taxpayer's permission, originates an electronic order from its bank to the taxpayer's bank to withdraw funds from the taxpayer's bank account so that the taxpayer may pay a tax liability associated with a tax document.

(2) "Electronic postmark" means a record of the date and time (in a particular time zone) that an authorized electronic transmitter receives the transmission of a taxpayer's electronically filed tax document on its host system.

(3) "Electronic transmitter" means a person or entity that is authorized to submit electronic tax documents directly to the department or directly to the internal revenue service for forwarding to the department.

(4) "Reject" or "rejected" means that an electronically filed tax document or an authorization for an electronic funds withdrawal is not accepted for processing.

(5) "Submit" or "submitted" means the date of the electronic postmark

assigned by an electronic transmitter to an electronically filed tax document or authorization for an electronic funds withdrawal. However, if an electronic transmitter does not assign an electronic postmark, then an electronically filed tax document or authorization for an electronic funds withdrawal shall be deemed submitted on the earlier of the date the internal revenue service receives the electronically filed tax document or authorization for an electronic funds withdrawal, or the date the department receives the electronically filed tax document or authorization for an electronic funds withdrawal. In any of the aforementioned cases, if the taxpayer can establish that the time of submission, adjusted for the taxpayer's time zone, was timely, the time of submission shall be based on the taxpayer's time zone.

(6) "Tax" means any tax, fee, special assessment or other imposition administered by the commissioner.

(7) "Tax document" means any return, report or other document relating to a tax.

(b) If a tax document is required or permitted to be filed with the department electronically (whether directly, directly through a return transmitter or through the internal revenue service), the tax document is submitted electronically on or before the due date for such document (including any extension of time), and the electronically filed tax document is rejected, then the commissioner may, by instruction, provide for a reasonable period of time during which the tax document may be corrected and re-submitted. If the corrected tax document is re-submitted on or before the expiration date of the extended time period, and such document is accepted by the department for processing, then the re-submitted tax document shall be deemed to have been timely filed even though the department receives it after the applicable due date (including any extension of time).

(c) (1) If a taxpayer has submitted an authorization for an electronic funds withdrawal on or before the due date for payment (including any extension of time), and such authorization is rejected by the department, then the commissioner may, by instruction, provide for a reasonable period of time, commencing from the date of rejection, for the taxpayer to re-submit the authorization for the electronic funds withdrawal. If the authorization for the electronic funds withdrawal is re-submitted on or before the expiration date of the extended time

period, then the electronic funds withdrawal shall be deemed to have been timely paid even though the department receives it after the applicable due date (including any extension of time).

(2) Any reasonable period of time provided for by the commissioner for re-submission of an authorization for an electronic funds withdrawal may differ from the reasonable time period, if any, provided for by the commissioner with respect to the electronically filed tax document with which the taxpayer's electronic funds withdrawal is associated.

(3) In lieu of re-submitting an authorization for an electronic funds withdrawal, the commissioner may permit a taxpayer to instead pay by substitute means, as defined by instruction. Any such instruction shall address the timeliness of payment by substitute means.

(d) The provisions of this section shall not apply to taxpayers participating in the electronic funds transfer programs prescribed by sections nine and ten of this article.

* NB There are 2 § 33's

*** § 33. Temporary deferral of certain tax credits.** 1. (a) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand thirteen, the excess over two million dollars of the total amount of the tax credits specified in subdivision three of this section that in each of those taxable years would otherwise be used to reduce the taxpayer's tax liability to the amount otherwise specified in this chapter or be refunded or credited as an overpayment will be deferred to and used or refunded in taxable years beginning on or after January first, two thousand thirteen in accordance with the provisions of section thirty-four of this article. Interest shall not be paid on the amounts of credit deferred.

(b) To determine the amount of each tax credit allowed for the taxable year to be used, refunded or credited as an overpayment the taxpayer shall multiply the amount of each credit subject to deferral that would have been used, refunded or credited as an overpayment in the absence of this section by a fraction, the numerator of which is two million dollars, and the denominator of which is the total amount of the taxpayer's credits subject to deferral pursuant to subdivision three of this section that would have been used, refunded or credited as an

overpayment for the taxable year in the absence of this section. The product is the amount of such credit that is not subject to deferral and thus allowed to be used, refunded or credited as an overpayment for the taxable year.

2. Taxpayers shall calculate and make any estimated tax payments required to be made by taking into account the deferral of credits required by this section. Taxpayers shall calculate any mandatory first installment payments made on or after the effective date of this section as if the deferral of credits required by this section had been in effect for the taxable year upon which that installment is based. In addition, for taxable years beginning on or after January first, two thousand ten and before January first, two thousand eleven, (a) no addition to tax under subsection (c) of section six hundred eighty-five of this chapter or subsection (c) of section one thousand eighty-five of this chapter shall be imposed with respect to any underpayment attributable to the deferral required by this section of any estimated taxes that are required to be paid prior to the enactment of this section, provided that the taxpayer timely made those payments; and (b) the required installment of estimated tax described in clause (ii) of subparagraph (B) of paragraph three of subsection (c) of section six hundred eighty-five of this chapter, and the exception to addition for underpayment of estimated tax described in paragraph one or two of subsection (d) of section one thousand eighty-five of this chapter, in relation to the preceding year's return, shall be calculated as if the deferral required by this section had been in effect for that entire preceding year.

3. (a) This section shall apply to the credits allowed under the following provisions in article nine-a of this chapter and any applicable counterpart provisions in articles nine, twenty-two, thirty-two and thirty-three of this chapter:

Section 210(12) investment tax credit

Section 210(12-B) empire zone investment tax credit

Section 210(12-C) empire zone employment incentive credit

Section 210(12-D) employment incentive credit

Section 210(12-E) QETC employment credit

Section 210(12-F) QETC capital tax credit

Section 210(12-G) QETC facilities, operations, and training credit

Section 210(17) special additional mortgage recording tax credit

Section 210(19) empire zone wage tax credit

Section 210(20) empire zone capital tax credit

Section 210(21-a) credit for servicing certain mortgages

Section 210(23) credit for employment of persons with disabilities

Section 210(24) alternative fuels credit

Section 210(25) credit for purchase of an automated external
defibrillator

Section 210(27) QEZE credit for real property taxes

Section 210(28) QEZE tax reduction credit

Section 210(30) low income housing credit

Section 210(31) green building credit

Section 210(33) brownfield redevelopment tax credit

Section 210(34) remediated brownfield credit for real property taxes
for qualified sites

Section 210(35) environmental remediation insurance credit

Section 210(37) security training tax credit

Section 210(37) credit for fuel cell electric generating equipment expenditures

Section 210(38) conservation easement tax credit

Section 210(38) empire state commercial production credit

Section 210(38) biofuel production credit

Section 210(39) clean heating fuel credit

Section 210(40) credit for rehabilitation of historic properties

Section 210(40) credit for companies who provide transportation to individuals with disabilities

(b) This section shall also apply to the credits allowed by the following sections:

Section 186-a(9) power for jobs credit

Section 606(g-1) solar energy system equipment credit

Section 606(pp) historic homeownership rehabilitation credit

Section 1511(k) credit for certain investments in certified capital companies

* NB There are 2 § 33's

*** § 34. Tax return preparers and software companies not to charge separately for New York e-file services.** (a) For purposes of this section, the following terms have the specified meanings:

(1) "Authorized tax document" means a tax document which the commissioner has authorized to be filed electronically.

(2) "Electronic" means computer technology.

(3) "Software company" means a developer of tax software.

(4) "Tax" means any tax or other matter administered by the commissioner pursuant to this chapter or any other provision of law.

(5) "Tax document" means a return, report or any other document relating to a tax or other matter administered by the commissioner.

(6) "Tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation, any authorized tax document. For purposes of this section, the term "tax return preparer" also includes a payroll service.

(7) "Tax software" means any computer software program intended for tax return preparation purposes. For purposes of this section, the term "tax software" includes, but is not limited to, an off-the-shelf software program loaded onto a tax return preparer's or taxpayer's computer, or an online tax preparation application.

(b) It shall be unlawful for a tax return preparer or a software company to charge a separate fee for the electronic filing of authorized tax documents. It shall also be unlawful for a software company to offer a version of its tax software that charges a separate fee for the electronic filing of authorized tax documents and one version of the same tax software that does not.

(c) Any tax return preparer or software company violating this section will be liable for a civil penalty of five hundred dollars for the first violation and one thousand dollars for each succeeding violation. The civil penalties imposed by this section shall be paid to the commissioner upon notice and demand, and will be assessed, collected and paid in the same manner as taxes under article twenty-seven of this chapter.

* NB There are 2 § 34's

*** § 34. Temporary deferral payout credits.** 1. The amounts of nonrefundable credits that are deferred pursuant to section thirty-three of this article in taxable years beginning on or after January first, two thousand ten and before January first, two thousand thirteen shall

be accumulated and constitute the taxpayer's temporary deferral nonrefundable payout credit. The taxpayer may first claim this credit in the taxable year beginning on or after January first, two thousand thirteen and before January first, two thousand fourteen. The taxpayer shall be allowed to claim this credit until the accumulated amounts are exhausted. The credit shall be allowed against the taxpayer's tax as provided in the provisions referenced in paragraph (a) of subdivision three of this section.

2. The amounts of refundable credits that are deferred pursuant to section thirty-three of this article in taxable years beginning on or after January first, two thousand ten and before January first, two thousand thirteen shall be accumulated and constitute the taxpayer's temporary deferral refundable payout credit. In the taxable year beginning on or after January first, two thousand thirteen and before January first, two thousand fourteen, the taxpayer shall be allowed to claim a credit equal to fifty percent of the amount accumulated. In the taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand fifteen, the taxpayer shall be allowed to claim a credit equal to seventy-five percent of the balance of the amount accumulated. In the taxable year beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen, the taxpayer shall be allowed to claim a credit equal to the remaining balance of the amount accumulated. The credit shall be allowed against the taxpayer's tax as provided in the provisions referenced in paragraph (b) of subdivision three of this section.

3. (a) For application of the temporary deferral nonrefundable payout credit, see the following provisions of this chapter:

- (1) Article 9: section 187-o
- (2) Article 9-A: section 210-B(33)
- (3) Article 22: section 606(qq)
- (4) Article 33: section 1511(y)

(b) For application of the temporary deferral refundable payout credit, see the following provisions of this chapter:

- (1) Article 9: section 187-p
- (2) Article 9-A: section 210-B(34)

(3) Article 22: section 606(rr)

(4) Article 33: section 1511(z)

* NB There are 2 § 34's

*** § 35. Use of electronic means of communication.** Notwithstanding any other provision of New York state law, where the department has obtained authorization of an online services account holder, in such form as may be prescribed by the commissioner, the department may use electronic means of communication to furnish any document it is required to mail per law or regulation. If the department furnishes such document in accordance with this section, department records of such transaction shall constitute appropriate and sufficient proof of delivery thereof and be admissible in any action or proceeding. Provided, however, that if a taxpayer uses a department system to access taxpayer information, including, but not limited to, notices, documents and account balance information, that is not an electronic communication furnished in lieu of mailing in accordance with this section, such accessed information shall not give the taxpayer the right to a hearing in the division of tax appeals, unless the right to protest such information is expressly authorized by this chapter or another provision of law.

* NB There are 2 § 35's

*** § 35. Economic transformation and facility redevelopment program tax credit.** (a) General. (1) A taxpayer which is a participant or the owner of a participant in the economic transformation and facility redevelopment program under article eighteen of the economic development law that is subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed the sum of following components against such tax, pursuant to the provisions referenced in subdivision (f) of this section.

(A) the economic transformation and facility redevelopment program jobs tax credit component;

(B) the economic transformation and facility redevelopment program investment tax credit component;

(C) the economic transformation and facility redevelopment program job

training credit component; and

(D) the economic transformation and facility redevelopment program real property tax credit component.

(2) A taxpayer which is a participant in the economic transformation and facility redevelopment program under article eighteen of the economic development law, or such participant's contractor, shall be allowed a sales tax refund as provided in subdivision (f) of section one thousand one hundred nineteen of this chapter.

(3) To be eligible for the economic transformation and facility redevelopment program tax credit, the taxpayer must meet all the following requirements.

(A) The taxpayer must be a participant or the owner of a participant in the economic transformation and facility development program. The commissioner of economic development must have issued a certificate of eligibility pursuant to section four hundred two of the economic development law to the taxpayer or to an entity in which the taxpayer is an owner. A copy of the certificate shall be attached to the taxpayer's report or return.

(B) The taxpayer or the entity in which the taxpayer is an owner must be a qualified new business as defined in subdivision (e) of this section.

(C) The taxpayer or the entity in which the taxpayer is an owner must create and maintain at least five net new jobs in the economic transformation area.

(4) The benefit period for the tax credits under articles nine, nine-A, twenty-two, thirty-two and thirty-three of this chapter is five consecutive taxable years, beginning with the first taxable year in which the five net new jobs are created. However, in no event may that benefit period start later than two years after the certificate of eligibility is issued. If, in any year of the benefit period, the taxpayer fails to maintain the required level of five net new jobs (measured quarterly), the taxpayer will not be allowed a credit for that year. Such failure to be allowed a credit will not extend the taxpayer's benefit period.

(b) Election of credit. No cost or expense paid or incurred by the taxpayer or the entity in which the taxpayer is an owner that is the basis for any of the above named credits shall be the basis for any

other tax credit under this chapter. If a taxpayer elects to claim an economic transformation and facility redevelopment program tax credit, the election is irrevocable.

(c) Information sharing. (1) Notwithstanding any provision of this chapter, employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange:

(A) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the economic transformation and facility redevelopment program;

(B) information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for the credits or who are claiming the credits; and

(C) information contained in or derived from credit claim forms submitted to the department and applications for admission into the economic transformation and facility redevelopment program.

(2) Other than the information required to be contained in the report issued pursuant to subdivision (d) of this section, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(d) Economic transformation and facility redevelopment program tax credits report. (1) The commissioner must publish an economic transformation and facility redevelopment program tax credits report annually by July thirty-first. The first report shall be due July thirty-first, two thousand thirteen.

(2) The credits report shall contain the following information about the economic transformation program and facility redevelopment tax credits claimed under this chapter during the previous calendar year:

(A) the name of each taxpayer claiming a credit; provided however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a New York subchapter S corporation, the name of each limited liability company, partnership or New York subchapter S corporation earning any of the credit must be included in the report instead of information about the taxpayer claiming the credit; and

(B) the amount of each credit earned by each taxpayer; provided

however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a New York subchapter S corporation, the amount of credit earned by each entity must be included in the report instead of information about the taxpayer claiming the credit.

(3) The credit report may also contain any other information received by the commissioner with regard to the economic transformation and facility redevelopment program tax credits that the commissioner deems to be useful in evaluating the use of the credits. The information included in the credit report will be based on the information filed with the department during the previous calendar year, to the extent that it is practicable to use that information.

(e) Definitions. (1) The terms "participant", "net new jobs", "economic transformation area", "related person", "certificate of eligibility", "benefit-cost ratio", and "qualified investment" shall have the same meaning as those terms have in section four hundred of the economic development law.

(2) The term "qualified new business" means a business entity that satisfies all of the following tests:

(A) the business entity must not be currently operating or located within the economic transformation area in which it is applying for certification under article eighteen of the economic development law;

(B) the business entity must not be moving existing jobs into the economic transformation area in which it is applying for certification under article eighteen of the economic development law from another area of the state;

(C) the business entity must not be substantially similar in ownership and operation to another taxpayer taxable or previously taxable under section one hundred eighty-three or one hundred eighty-four or former section one hundred eighty-five of article nine, former section one hundred eighty-six of this chapter or article nine-A, twenty-two or thirty-three of this chapter or former article thirty-two of this chapter or the income or losses of which is or was includable under article twenty-two of this chapter;

(D) the business entity must not have caused individuals to transfer from existing employment in New York with another business entity with similar ownership to similar employment with the business entity;

(E) the business entity must not have acquired, purchased, leased, or had transferred to it real property located in the economic transformation area in which it is applying for certification if that real property was previously owned by an entity with similar ownership, regardless of form of incorporation or organization; and

(F) the business entity must not be substantially similar in operation to a business entity from which it has acquired real or tangible personal property that is located in the economic transformation area in which it is applying for certification under article eighteen of the economic development law.

(3) The term "entity in which the taxpayer is an owner" shall mean a limited liability company in which the taxpayer is a member, a partnership in which the taxpayer is a partner and a New York subchapter S corporation in which the taxpayer is a shareholder.

(f) Cross-references. For application of the credits provided for in this section, see the following provisions of this chapter:

(2) article 9-A: section 210-B(35).

(3) article 22: section 606 (ss).

(4) article 33: section 1511 (aa).

(g) Economic transformation and facility redevelopment program jobs tax credit. A taxpayer which meets the requirements in this section shall be eligible to claim a credit for each net new job that the taxpayer creates in the economic transformation area with respect to the project for which the certificate of eligibility is issued. The amount of such credit per job shall be equal to the product of the gross wages paid and 6.85 percent.

(h) Economic transformation and facility redevelopment program investment tax credit. (1) A taxpayer which meets the requirements in this section shall be eligible to claim a credit on qualified investments with respect to the project for which the certificate of eligibility is issued. The credit shall be equal to ten percent of the cost or other basis for federal income tax purposes of the qualified investment at a closed facility. Provided however, for purposes of this credit only, a taxpayer that is the owner of a closed facility described in paragraph (d) of subdivision eleven of section four hundred of the economic development law, shall be allowed to include in its cost or other basis of the qualified investment at the closed facility, any

demolition costs incurred at such closed facility. Those demolition costs shall be limited to the following costs: (i) asbestos removal costs, (ii) rental of demolition equipment, (iii) personnel costs to operate the demolition equipment, (iv) costs to remove and dispose of demolition debris, (v) the costs of any permits, licenses and insurance necessary for the demolition. The total amount of investment tax credit allowed for all eligible participants under this subdivision for qualified investments located at each closed facility shall not exceed eight million dollars. The credit shall be equal to six percent of the cost or other basis for federal income tax purposes for all other qualified investments, but the credit allowed to a taxpayer may not exceed four million dollars.

(2) Costs incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the credit. A taxpayer which is a participant in the economic transformation and redevelopment program or is an owner of an entity that is a participant is not eligible for any other investment tax credit provided under this chapter.

(3) If the taxpayer is a partner in a partnership, member of a limited liability company or shareholder of a New York S corporation, then the four million dollar limit imposed above by the preceding sentences shall be applied at the entity level, so that the aggregate credit allowed to all the partners, members or shareholders of each such entity in the taxable year does not exceed the four million dollar limitation. Further, in order to properly administer the limitation of investment tax credit at a closed facility, the department may disclose information about the calculation and the amounts of the credits claimed under this subdivision for qualified investments at a particular closed facility to other taxpayers claiming investment tax credits under this subdivision at that same closed facility.

(i) Economic transformation and facility redevelopment program training tax credit. (1) A taxpayer which meets the requirements of this section shall be allowed a credit for qualified training expenditures paid by the taxpayer with respect to the project for which the certificate of eligibility is issued. The amount of the credit shall be fifty percent of the qualified training expenses paid during the taxable year, subject to a limitation of no more than four thousand dollars per

employee per year for such training expenses. This credit applies only to qualified training provided to employees who were hired after they lost their jobs at a closed facility as a result of the closure of that facility as described in subdivision eleven of section four hundred of the economic development law.

(2) Qualified training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting, post-secondary college or university in New York state that (A) directly relates to the duties that the employee performs for the taxpayer within the economic transformation area; and (B) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(3) Qualified training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any related person, that are paid or reimbursed by the taxpayer. Qualified training expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified training expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a site in an economic transformation area during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work.

Qualified training expenditures shall not include expenses for in-house or shared training outside of a New York state higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(j) Economic transformation and facility redevelopment program real property tax credit. (1) A taxpayer which meets the requirements of this section shall be allowed a credit measured by the real property taxes on the real property located in the economic transformation area with respect to the project for which the certificate of eligibility is issued. In the first taxable year that the taxpayer may claim this credit, the credit shall be equal to twenty-five percent of the real property taxes assessed and paid during that year by the participant on the real property located in the economic transformation area outside of the closed facility. If the real property is located entirely within the grounds of a closed facility, the credit in the first year of the benefit period shall be equal to fifty percent of the real property taxes assessed and paid by the participant during that year on that property. In the following years of the benefit period, the percentage decreases by five percentage points each year for real property located in the economic transformation area outside of the closed facility, and ten percentage points for real property located at the closed facility.

(2) (A) For purposes of this credit, "real property taxes" means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to article eighteen or article nineteen of the real property tax law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by such article eighteen or nineteen, whichever is applicable.

(B) The term "real property taxes" does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when (i) the property subject to the charge is limited to the property that

benefits from the charge, or (ii) the amount of the charge is determined by the benefit to the property assessed, or (iii) the improvement for which the charge is assessed tends to increase the property value.

(C) The term "real property taxes" includes payments in lieu of taxes made by the participant which is the beneficial owner of the real property to the state, a municipal corporation or a public benefit corporation pursuant to a written agreement entered into between the participant and the state, municipal corporation, or public benefit corporation. Provided, however, a payment in lieu of taxes made by the participant pursuant to a written agreement shall not constitute real property taxes in any taxable year to the extent that such payment exceeds the product of (i) the basis for federal income tax purposes of the real property located in the economic transformation area and subject to that agreement, calculated without regard to depreciation, on the last day of the taxable year, and (ii) the estimated effective full value tax rate within the county in which such property is located, as most recently calculated by the commissioner. The commissioner shall annually calculate estimated effective full value tax rates within each county for this purpose based upon the most current information available to him or her in relation to county, city, town, village and school district taxes.

(k) Recapture of credits. If the participant at the end of its benefit period has not created sufficient net new jobs and made sufficient qualified investments to achieve a benefit-cost ratio of at least ten to one, the taxpayer shall be required to add back as tax in the last year of its benefit period the portion of the economic transformation and facility redevelopment tax credits claimed in the years of its benefit period necessary to achieve a cost benefit ratio of ten to one.

* NB Repealed December 31, 2026

* NB There are 2 § 35's

§ 36. Empire state jobs retention program credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of the credit, allowable for ten consecutive tax

years, is equal to the amount determined pursuant to section four hundred twenty-five of the economic development law.

(b) Eligibility. To be eligible for the empire state jobs retention credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development pursuant to subdivision four of section four hundred twenty-four of the economic development law, which certificate shall set forth the amount of the credit that may be claimed for the taxable year. A taxpayer may claim such credit for up to ten consecutive taxable years commencing in the first taxable year that the taxpayer receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later. However, a taxpayer shall not be allowed to claim the credit prior to the tax year commencing on or after January first, two thousand twelve and before January first, two thousand thirteen. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. Such certificate, if required by the commissioner, shall be attached to the taxpayer's return. No cost or expense paid or incurred by the taxpayer which is included as part of the calculation of this credit shall be the basis of any other tax credit.

(c) Information sharing. (1) Notwithstanding any provision of this chapter, employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange:

(A) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the empire state jobs retention program;

(B) information regarding the credit applied for, allowed or claimed pursuant to this section and taxpayers who are applying for the credit or who are claiming the credit; and

(C) information contained in or derived from credit claim forms submitted to the department and applications for admission into the empire state jobs retention program.

Except as provided in paragraph two of this subdivision, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under

the state's freedom of information law.

(2) Notwithstanding any provision of this chapter, the commissioner or the commissioner's designee is authorized to release the name of each taxpayer claiming the credit and the amount of the credit earned by each taxpayer. However, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, only the name of a limited liability company, partnership or subchapter S corporation participating in the empire state jobs retention program and the amount of credit earned by that entity may be released.

(d) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of economic development under article twenty of the economic development law is revoked by such department, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(e) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) article 9-A: section 210-B, subdivision 37;
- (2) article 22: section 606, subsection (tt);
- (3) article 33, section 1511, subdivision (bb).

§ 37. Alcoholic beverage production credit. (a) General. A taxpayer subject to tax under article nine-A or twenty-two of this chapter, that is registered as a distributor under article eighteen of this chapter, and that produces sixty million or fewer gallons of beer or cider, twenty million or fewer gallons of wine, or eight hundred thousand or fewer gallons of liquor in this state in the taxable year, shall be allowed a credit against such taxes in the amount specified in subdivision (b) of this section and pursuant to the provisions referenced in subdivision (c) of this section. Provided, however, that no credit shall be allowed for any beer, cider, wine or liquor produced in excess of fifteen million five hundred thousand gallons in the taxable year. If the taxpayer is a partner in a partnership or shareholder of a New York S corporation, then the cap imposed by the preceding sentence shall be applied at the entity level, so that the

aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed that cap.

(b) The amount of the credit per taxpayer per taxable year (or pro rata share of earned credit in the case of a partnership) for each gallon of beer, cider, wine or liquor produced in this state shall be determined as follows:

(1) for the first five hundred thousand gallons of:

i. beer produced in this state in the taxable year, the credit shall equal fourteen cents per gallon;

ii. cider, artificially carbonated sparkling cider, and natural sparkling cider, containing more than three and two-tenths per centum of alcohol by volume produced in this state in the taxable year, the credit shall equal fourteen cents per gallon;

iii. still wine, artificially carbonated sparkling wine, and natural sparkling wine produced in this state in the taxable year, the credit shall equal thirty cents per gallon;

iv. liquors containing not more than twenty-four per centum of alcohol by volume, but more than two per centum of alcohol per volume, produced in this state in the taxable year, the credit shall equal two dollars and fifty-four cents per gallon;

v. liquors containing more than zero per centum of alcohol by volume, but not more than two per centum of alcohol by volume, produced in this state in the taxable year, the credit shall equal zero;

vi. all other liquors produced in this state in the taxable year, the credit shall equal six dollars and forty-four cents per gallon; and

(2) for each gallon of beer, cider, wine or liquor produced in this state in the taxable year in excess of five hundred thousand gallons, the credit shall equal four and one-half cents per gallon.

(c) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9-A: Section 210-B, subdivision 39.

(2) Article 22: Section 606, subsections (i) and (uu).

*** § 38. New York innovation hot spot program tax benefits.** (a) As used in this chapter, the terms "New York state innovation hot spot" and "qualified entity" shall have the same meaning as under section sixteen-v of the New York state urban development corporation act.

(b) A taxpayer under article nine-A of this chapter that is a qualified entity of a New York state innovation hot spot shall be subject only to the fixed dollar minimum tax, imposed under paragraph (d) of subdivision one of section two hundred ten of this chapter, for five taxable years, beginning with the first taxable year during which the qualified entity becomes a tenant in or part of an innovation hot spot. A taxpayer under article nine-A of this chapter that is a corporate partner in a qualified entity, or is a qualified entity that is located both within and without an innovation hot spot, shall be allowed only a deduction for the amount of income or gain included in its federal taxable income to the extent that the income or gain is attributable to the operations at or as part of the innovation hot spot. The deduction is allowed for five taxable years, beginning with the first taxable year during which the qualified entity becomes a tenant in or part of an innovation hot spot.

(c) An individual who is the sole proprietor of a qualified entity or a member of a limited liability company, a partner in a partnership or a shareholder in a New York subchapter S corporation where the limited liability company, partnership, or S corporation is a qualified entity, that is taxable under article twenty-two of this chapter shall be allowed a deduction for the amount of income or gain included in its federal adjusted gross income to the extent that the income or gain is attributable to the operations of a qualified entity at or as a part of a New York state innovation hot spot. The deduction is allowed for five taxable years, beginning with the first taxable year during which the qualified entity becomes a tenant in or part of an innovation hot spot.

(d) A qualified entity that is a tenant in or part of a New York state innovation hot spot shall be eligible for a credit or refund for sales and use taxes imposed on the retail sale of tangible personal property or services under subdivisions (a), (b), and (c) of section eleven

hundred five and section eleven hundred ten of this chapter. The credit or refund shall be allowed for sixty months beginning with the first full month after the qualified entity becomes a tenant in an incubator hot spot.

(e) A taxpayer who claims any of the tax benefits described in this section is no longer eligible for any other New York state exemptions, deductions, or credit or refunds under this chapter to the extent that any such exemption, deduction, credit or refund is attributable to the business operations of a tenant in or as part of the New York state innovation hot spot. The election to claim the tax benefits described in this section is not revocable.

(f) Cross-references. For application of the tax benefits provided for in this section, see the following provisions of this chapter:

(i) Article 9-A, section 208, subdivision (9), paragraph (a), subparagraph (18).

(ii) Article 9-A, section 209, subdivision 11.

(iii) Article 22, section 612, subsection (c), paragraph (39).

(iv) Article 28, section 1119, subdivision (d).

* NB There are 2 § 38's

*** § 38. Minimum wage reimbursement credit.** (a) A taxpayer that is an eligible employer or an owner of an eligible employer as defined in subdivision (b) of this section shall be eligible for a credit against the tax imposed under article nine, nine-A, twenty-two, or thirty-three of this article, pursuant to the provisions referenced in subdivision (e) of this section.

(b) An eligible employer is a corporation (including a New York S corporation), a sole proprietorship, a limited liability company or a partnership. An eligible employee is an individual who is (i) employed by an eligible employer in New York state, (ii) paid at the minimum wage rate as defined in article nineteen of the labor law during the taxable year by the eligible employer, (iii) between the ages of sixteen and nineteen during the period in which he or she is paid at such minimum wage rate by the eligible employer, and (iv) a student during the period in which he or she is paid at such minimum wage rate by the taxpayer.

(c) For taxable years beginning on or after January first, two

thousand fourteen and before January first, two thousand fifteen, the amount of the credit allowed under this section shall be equal to the product of the total number of hours worked during the taxable year by eligible employees for which they were paid at the minimum wage rate as defined in article nineteen of the labor law and seventy five cents. For taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen, the amount of the credit allowed under this section shall be equal to the product of the total number of hours during the taxable year worked by eligible employees for which they were paid at such minimum wage rate and one dollar and thirty-one cents. For taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand nineteen, the amount of the credit allowed under this section shall be equal to the product of the total number of hours during the taxable year worked by eligible employees for which they were paid at such minimum wage rate and one dollar and thirty-five cents. Provided, however, if the federal minimum wage established by federal law pursuant to 29 U.S.C. section 206 or its successors is increased above eighty-five percent of the minimum wage in article nineteen of the labor law, the dollar amounts in this subdivision shall be reduced to the difference between the minimum wage in article nineteen of the labor law and the federal minimum wage. Such reduction would take effect on the date that employers are required to pay such federal minimum wage.

(d) Employer prohibition. An employer shall not discharge an employee and hire an eligible employee solely for the purpose of qualifying for this credit. An eligible employee who is used as the basis for this credit may not be used as the basis of any other credit allowed under this chapter.

(e) Cross references: For application of the credit provided in this section, see the following provisions of this chapter:

- (2) Article 9-A: Section 210-B, subdivision 40.
- (3) Article 22: Section 606, subsection (aaa).
- (4) Article 33: Section 1511, subdivision (cc).

* NB There are 2 § 38's

§ 39. Tax benefits for businesses located in tax-free NY areas and

employees of such businesses. (a) (1) Any business or owner of a business in the case of a business taxed as a sole proprietorship, partnership or New York S corporation, that is located in a tax-free NY area approved pursuant to article twenty-one of the economic development law is eligible for the tax benefits described in this section. Unless otherwise specified, such business or owner of such business shall be eligible for these tax benefits for a period of ten consecutive taxable years, commencing with the taxable year during which it locates in the tax-free NY area.

(2) In order to be eligible for these tax benefits during any taxable year, calendar quarter or sales tax quarter, such business must be approved to participate in the START-UP NY program, must operate at the approved location in the tax-free NY area, and must satisfy the eligibility criteria specified in paragraph (b) of subdivision one of section four hundred thirty-three of the economic development law.

(b) Tax-free NY area elimination credit. Such business or the owner of such business shall be eligible for the tax-free NY area tax elimination credit described in section forty of this article.

(c-1) Excise tax on telecommunication services. Such business or owner of a business shall be eligible for a credit of the excise tax on telecommunication services imposed by section one hundred eighty-six-e of this chapter that is passed through to such business, pursuant to the provisions referenced in subdivision (k) of this section.

(d) Metropolitan commuter transportation district mobility tax. If the tax-free NY area at which such business is located is within the metropolitan commuter transportation district (MCTD), and such business is an employer engaged in business within the MCTD, the payroll expense of such business at such location within the tax-free NY area shall be exempt from the metropolitan commuter transportation district mobility tax imposed under article twenty-three of this chapter for forty consecutive calendar quarters, commencing with the calendar quarter during which the employer locates in the tax-free NY area within the MCTD. If the tax-free NY area at which such business is located is within the MCTD and the owner of such business is an individual who has net earnings from self-employment at such location, such net earnings shall be exempt from the metropolitan commuter transportation district mobility tax imposed under article twenty-three of this chapter for ten

consecutive taxable years commencing with the taxable year during which the business locates in the tax-free NY area.

(e) To the extent specified, the wages of an individual who is an employee of such business located within a tax-free NY area received from such business for employment in such tax-free NY area shall be eligible for the benefits as provided in article twenty-two of this chapter, the New York city personal income tax as provided in article thirty of this chapter, the Yonkers city income tax as provided in article thirty-A of this chapter, and the Yonkers earnings tax on non-residents during the ten taxable year period for such business specified in subdivision (a) of this section, provided the requirements of this subdivision are satisfied.

(i) The individual when employed by such business must be engaged in work performed exclusively at the location within the tax-free NY area during the taxable year.

(ii) The individual when employed by such business must be engaged in work at the location of such business within the tax-free NY area for at least one-half of the taxable year.

(iii) Such business must be in compliance with the requirements set forth in subdivision (a) of this section.

(iv) The individual must be employed by such business in a net new job created by such business in the tax-free NY area.

(f) Sales and use tax. Such business shall be eligible for a credit or refund for sales and use taxes imposed on the retail sale of tangible personal property or services under subdivisions (a), (b), and (c) of section eleven hundred five and section eleven hundred ten of this chapter and similar taxes imposed pursuant to the authority of article twenty-nine of this chapter. The credit or refund shall be allowed for one hundred twenty consecutive months beginning with the month during which such business locates in the tax-free NY area.

(g) Real estate transfer taxes. Any lease of property to such business shall be exempt from any state or local real estate transfer tax or real property transfer tax.

(h) (A) Notwithstanding any provision of this chapter to the contrary, the commissioner, to the extent practicable, may disclose publicly the names and addresses of the businesses receiving any of the tax benefits specified in this section. In addition, the commissioner may disclose

publicly the amounts of such benefits allowed to each such business, and whether or not a business created or maintained net new jobs during the taxable year. With regard to the income tax exemption specified in subdivision (e) of this section, the commissioner may publicly disclose the aggregate amounts of such tax exemption allowed to employees. In addition, the commissioner may publicly disclose the number of net new jobs such business reports on its tax return or report or any other information necessary for the commissioner of economic development or the campus, college or university sponsoring the tax-free NY area approved pursuant to article twenty-one of the economic development law to monitor and enforce compliance with the law, rules and regulations governing the START-UP NY program.

(B) Notwithstanding any provision of this chapter to the contrary, the commissioner, in determining whether a business or any of its owners is entitled to the tax benefits described in this section, may utilize and if necessary, disclose to the commissioner of economic development, information derived from the tax returns of such business or related persons of such business and wage reporting information relating to any employees of such business or its related persons.

(i) Such business shall not be allowed to claim any other tax credit allowed under this chapter with respect to its activities or employees in such tax-free NY area.

(j) If the application of a business for participation in the START-UP NY program specifies that failure to meet the performance benchmarks specified in such application shall result in proportional recovery of tax benefits awarded under the START-UP NY program, the business shall be required to reduce the total amount of tax benefits described in this section that the business or its owners claimed or received during the taxable year by the percentage reduction in net new jobs promised by the performance benchmarks, and if the tax benefits are reduced to an amount less than zero, those negative amounts shall be added back as tax. The amount required to be added back shall be reported on such business's corporate franchise tax report if such business is taxed as a corporation or on the corporate franchise tax reports or personal income tax returns of the owners of such business if such business is taxed as a sole proprietorship, partnership or New York S corporation.

(k) Cross-references. For application of the tax benefits provided for

in this section, see the following provisions of this chapter:

- (1) Section 40.
- (4) Article 9-A: section 210-B, subdivision 41 and subdivision 44.
- (5) Article 22: section 606, subsection (i), paragraph (1), subparagraph (B), clause (xxxvi).
- (6) Article 22: section 606, subsection (ww) and subsection (yy).
- (7) Article 22: section 612, subsection (c), paragraph (40).
- (8) Article 23: section 803.
- (9) Article 28: section 1119, subdivision (d).
- (10) Article 31: section 1405, subdivision (b), paragraph 11.

§ 39-a. Penalties for fraud in the START-UP NY program. If the commissioner of economic development on his or her own initiative or on the recommendation of a sponsoring campus, university or college finally determines that any such business participating in the START-UP NY program authorized under article twenty-one of the economic development law has acted fraudulently in connection with its participation in such program, such business:

- (a) shall be immediately terminated from such program;
- (b) shall be subject to applicable criminal penalties, including but not limited to the felony crime of offering a false instrument for filing in the first degree pursuant to section 175.35 of the penal law; and
- (c) shall be required in that year to add back to tax the total value of the tax benefits described in section thirty-nine of this article that such business has received and that the employees of such business have received up to the date of such finding. The amount required to be added back shall be reported on such business's corporate franchise report if such business is taxed as a corporation or on the corporate franchise tax reports or personal income tax returns of the owners of such business if such business is taxed as a sole proprietorship, partnership or New York S corporation.

§ 40. The tax-free NY area tax elimination credit. (a) Allowance of credit. A taxpayer that is a business or owner of a business in the case

of a business taxed as a sole proprietorship, partnership or New York S corporation, that is located in a tax-free NY area approved pursuant to article twenty-one of the economic development law and is subject to tax under article nine-A, or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section, to be computed as hereinafter provided.

(b) Amount of credit. The amount of the credit shall be the product of: (1) the tax-free area allocation factor; and (2) the tax factor.

(c) Tax-free area allocation factor. The tax-free area allocation factor shall be the percentage representing the business's economic presence in the tax-free NY area in which the business was approved to locate pursuant to article twenty-one of the economic development law. This percentage shall be computed by:

(1) ascertaining the percentage that the average value of the business's real and tangible personal property, whether owned or rented to it, in the tax-free NY area in which the business was located during the period covered by the taxpayer's report or return bears to the average value of the business's real and tangible personal property, whether owned or rented to it, within the state during such period; provided that the term "value of the business's real and tangible personal property" shall have the same meaning as such term has in paragraph (a) of subdivision two of section two hundred nine-B of this chapter; and

(2) ascertaining the percentage that the total wages, salaries and other personal service compensation, similarly computed, during such period of employees, except general executive officers, employed at the business's location in the tax-free NY area, bears to the total wages, salaries and other personal service compensation, similarly computed, during such period, of all the business's employees within the state, except general executive officers; and

(3) adding together the percentages so determined and dividing the result by two.

For purposes of article twenty-two of this chapter, references in this subdivision to property, wages, salaries and other personal service compensation shall be deemed to be references to such items connected with the conduct of a business.

(d) Tax factor. (1) General. The tax factor shall be, in the case of article nine-A of this chapter, the largest of the amounts of tax determined for the taxable year under paragraphs (a) through (d) of subdivision one of section two hundred ten of such article after the deduction of any other credits allowable under such article. The tax factor shall be, in the case of article twenty-two of this chapter, the tax determined for the taxable year under subsections (a) through (d) of section six hundred one of such article after the deduction of any other credits allowable under such article.

(2) Sole proprietors, partners and S corporation shareholders. (A) Where the taxpayer is a sole proprietor of a business located in a tax-free NY area, the taxpayer's tax factor shall be that portion of the amount determined in paragraph one of this subdivision that is attributable to the income of the business at its location in the tax-free NY area. Such attribution shall be made in accordance with the ratio of the taxpayer's income from such business allocated within the state, entering into New York adjusted gross income, to the taxpayer's New York adjusted gross income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment that reasonably reflects the portion of the taxpayer's tax attributable to the income of such business. In no event may the ratio so determined exceed 1.0. The income from such business allocated within the state shall be determined as if the sole proprietor was a non-resident.

(B)(i) Where the taxpayer is a member of a partnership that is a business located in a tax-free NY area, the taxpayer's tax factor shall be that portion of the amount determined in paragraph one of this subdivision that is attributable to the income of the partnership. Such attribution shall be made in accordance with the ratio of the partner's income from the partnership allocated within the state to the partner's entire income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment that reasonably reflects the portion of the partner's tax attributable to the income of the partnership. In no event may the ratio so determined exceed 1.0. The income from the partnership allocated within the state shall be determined as if any of the partners was a non-resident.

(ii) For purposes of article nine-A of this chapter, the term "partner's income from the partnership" means partnership items of

income, gain, loss and deduction, and New York modifications thereto, entering into business income and the term "partner's entire income" means business income, allocated within the state. For purposes of article twenty-two of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into New York adjusted gross income, and the term "partner's entire income" means New York adjusted gross income.

(C) (i) Where the taxpayer is a shareholder of a New York S corporation that is a business located in a tax-free NY area, the shareholder's tax factor shall be that portion of the amount determined in paragraph one of this subdivision that is attributable to the income of the S corporation. Such attribution shall be made in accordance with the ratio of the shareholder's income from the S corporation allocated within the state, entering into New York adjusted gross income, to the shareholder's New York adjusted gross income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment that reasonably reflects the portion of the shareholder's tax attributable to the income of such business. The income of the S corporation allocated within the state shall be determined by multiplying the income of the S corporation by a business allocation factor that shall be determined in clause (ii) of this subparagraph. In no event may the ratio so determined exceed 1.0.

(ii) The business allocation factor for purposes of this subparagraph shall be computed by adding together the property factor specified in subclause (I) of this clause, the wage factor specified in subclause (II) of this clause and the apportionment factor determined under section two hundred ten-A of this chapter and dividing by three.

(I) The property factor shall be determined by ascertaining the percentage that the average value of the business's real and tangible personal property, whether owned or rented to it, within the state during the period covered by the taxpayer's report or return bears to the average value of the business's real and tangible personal property, whether owned or rented to it, within and without the state during such period; provided that the term "value of the business's real and tangible personal property" shall have the same meaning as such term has in paragraph (a) of subdivision two of section two hundred nine-B of

this chapter.

(II) The wage factor shall be determined by ascertaining the percentage that the total wages, salaries and other personal service compensation, similarly computed, during such period of employees, except general executive officers, employed at the business's location or locations within the state, bears to the total wages, salaries and other personal service compensation, similarly computed, during such period, of all the business's employees within and without the state, except general executive officers.

(3) Combined returns or reports. (A) Where the taxpayer is a business located in a tax-free NY area and is required or permitted to make a return or report on a combined basis under article nine-A of this chapter, the taxpayer's tax factor shall be the amount determined in paragraph one of this subdivision that is attributable to the income of such business. Such attribution shall be made in accordance with the ratio of the business's income allocated within the state to the combined group's income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment that reasonably reflects the portion of the combined group's tax attributable to the income of such business. In no event may the ratio so determined exceed 1.0.

(B) The term "income of the business located in a tax-free NY area" means business income calculated as if the taxpayer was filing separately and the term "combined group's income" means business income as shown on the combined report, allocated within the state.

(4) If a business is generating or receiving income from a line of business or intangible property that was previously conducted, created or developed by the business or a related person, as that term is defined in section four hundred thirty-one of the economic development law, the tax factor specified in this subdivision shall be adjusted to disregard such income.

(e) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9-A: section 210-B, subdivision 41.

(2) Article 22: section 606, subsection (i), paragraph (1), subparagraph (B), clause (xxxvi).

(3) Article 22: section 606, subsection (ww).

§ 41. Limitations on tax credit eligibility. Any taxpayer who stands convicted, or who is a shareholder of an S corporation or partner in a partnership which is convicted, of an offense defined in article two hundred or four hundred ninety-six or section 195.20 of the penal law shall not be eligible for any tax credit allowed under article nine, nine-A, thirty-two or thirty-three of this chapter or any business tax credit allowed under article twenty-two of this chapter. For purposes of this section, a business tax credit allowed under article twenty-two of this chapter is a tax credit allowed to taxpayers under article twenty-two which is substantially similar to a tax credit allowed to taxpayers under article nine-A of this chapter. In the event a person or firm, partnership or corporation is convicted of an offense defined in article two hundred or four hundred ninety-six or section 195.00 of the penal law, the office responsible for prosecuting such offense shall send notice of such conviction, together with the names of any firm, partnership or corporation of which the person is known to be a member, partner, officer or director, to the commissioner.

§ 42. Farm workforce retention credit. (a) A taxpayer that is a farm employer or an owner of a farm employer shall be eligible for a credit against the tax imposed under article nine-A or twenty-two of this chapter, pursuant to the provisions referenced in subdivision (g) of this section.

(b) A farm employer is a corporation (including a New York S corporation), a sole proprietorship, a limited liability company or a partnership who is also an eligible farmer.

(c) For purposes of this section, the term "eligible farmer" shall have the same meaning as set forth in subsection (n) of section six hundred six of this chapter.

(d) An eligible farm employee is an individual who is employed for five hundred hours or more per taxable year, by a farm employer in New York state, but excluding general executive officers of the farm employer; provided, however, that where an individual employed by a farm employer in New York state becomes unable to work due to a documented

illness or disability, the hours such individual is employed may be combined with the hours worked by an individual hired to replace such individual when determining whether the five hundred hour threshold has been met.

(d-1) Special rules. If more than fifty percent of such eligible farmer's federal gross income from farming is from the sale of wine from a licensed farm winery as provided for in article six of the alcoholic beverage control law, or from the sale of cider from a licensed farm cidery as provided for in section fifty-eight-c of the alcoholic beverage control law, then an eligible farm employee of such eligible farmer shall be included for purposes of calculating the amount of credit allowed under this section only if such eligible farm employee is employed by such eligible farmer on qualified agricultural property as defined in paragraph four of subsection (n) of section six hundred six of this chapter.

(e) For taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen, the amount of the credit allowed under this section shall be equal to the product of the total number of eligible farm employees and two hundred fifty dollars. For taxable years beginning on or after January first, two thousand eighteen and before January first, two thousand nineteen, the amount of the credit allowed under this section shall be equal to the product of the total number of eligible farm employees and three hundred dollars. For taxable years beginning on or after January first, two thousand nineteen and before January first, two thousand twenty, the amount of the credit allowed under this section shall be equal to the product of the total number of eligible farm employees and five hundred dollars. For taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one, the amount of the credit allowed under this section shall be equal to the product of the total number of eligible farm employees and four hundred dollars. For taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-two, the amount of the credit allowed under this section shall be equal to the product of the total number of eligible farm employees and six hundred dollars. For taxable years beginning on or after January first, two thousand twenty-two and before January first, two thousand

twenty-nine, the amount of the credit allowed under this section shall be equal to the product of the total number of eligible farm employees and twelve hundred dollars.

(f) A taxpayer claiming the credit allowed under this section shall not be allowed to claim any other tax credit allowed under this chapter, except the credit allowed under section forty-two-a of this article, with respect to any eligible farm employee included in the total number of eligible farm employees used to determine the amount of the credit allowed under this section.

(g) Cross references: For application of the credit provided in this section, see the following provisions of this chapter:

- (1) Article 9-A: Section 210-B, subdivision 51.
- (2) Article 22: Section 606, subsection (fff).

§ 42-a. Farm employer overtime credit. (a) Notwithstanding subdivision (f) of section forty-two of this article, a taxpayer that is an eligible farm employer or an owner of an eligible farm employer shall be eligible for a credit against the tax imposed under article nine-A or twenty-two of this chapter, pursuant to the provisions referenced in subdivision (h) of this section.

(b) For purposes of this section, the term "eligible farm employer" means a taxpayer who received an overtime expense certificate pursuant to section three hundred thirty-five of the agriculture and markets law and who is an eligible farmer, as defined in subsection (n) of section six hundred six of this chapter for the taxable year.

(c) Special rules. If more than fifty percent of such eligible farm employer's federal gross income from farming is from the sale of wine from a licensed farm winery as provided for in article six of the alcoholic beverage control law, or from the sale of cider from a licensed farm cidery as provided for in section fifty-eight-c of the alcoholic beverage control law, then an eligible farm employee of such eligible farmer shall be included for purposes of calculating the amount of credit allowed under this section only if such eligible farm employee is employed by such eligible farmer on qualified agricultural property as defined in paragraph four of subsection (n) of section six hundred six of this chapter.

(d) The amount of the credit allowed under this section shall be equal to one hundred eighteen percent of the aggregate amount of overtime expense paid by the qualified farm employer as certified by the department of agriculture and markets pursuant to section three hundred thirty-five of the agriculture and markets law.

(e) A taxpayer who received a preliminary overtime expense certificate pursuant to section three hundred thirty-five of the agriculture and markets law shall have the option to request an advance payment of the portion of the amount of tax credit they are allowed under this section equal to one hundred eighteen percent of aggregate amount of overtime expense that the farm employer paid from January first through July thirty-first, as certified by the department of agriculture and markets pursuant to section three hundred thirty-five of the agriculture and markets law. A taxpayer must submit an advanced payment request to the department in the manner prescribed by the commissioner after it has been issued a preliminary overtime expense certificate by the department of agriculture and markets pursuant to article twenty-five-C of the agriculture and markets law (or such certificate has been issued to a partnership, limited liability company or subchapter S corporation in which it is a partner, member or shareholder, respectively, that is a farm employer), but such request must be submitted no later than November first of the taxable year for which the credit is being claimed. For those taxpayers who have requested an advance payment and for whom the commissioner has determined to be eligible for this credit, the commissioner shall advance a payment of the portion of the amount of tax credit allowed to the taxpayer. The taxpayer will claim on the taxpayers' return for the taxable year the portion of the amount of tax credit allowed for eligible overtime paid by the farm employer from August first through December thirty-first. The taxpayer must properly reconcile the advance payment of tax credit allowed under this subdivision on the taxpayer's return.

(f) If a taxpayer that has received an advance payment is not an eligible farm employer or an owner of an eligible farm employer for the taxable year for which it received an advance payment, the taxpayer shall be required to add back as tax the amount of advance payment the taxpayer received during the taxable year.

(g) Notwithstanding any provision of this chapter, employees of the

department of agriculture and markets and the department shall be allowed to share and exchange:

(i) information derived from tax returns or reports that is relevant to a taxpayer's eligibility for the credit allowed by this section;

(ii) information regarding the credit applied for, allowed or claimed pursuant to this section and regarding taxpayers that are applying for the credit or that are claiming the credit; and

(iii) information collected by the department of agriculture and markets and exchanged between the department of agriculture and markets and the department pursuant to this section shall not be subject to disclosure or inspection under the state's freedom of information law.

(h) Cross references: For application of the credit provided in this section, see the following provisions of this chapter:

(1) Article 9-A: Section 210-B, subdivision 58.

(2) Article 22: Section 606, subsection (nnn).

*** § 43. Life sciences research and development tax credit. (a)**

Allowance of credit. (1) A taxpayer that is a qualified life sciences company, or that is a sole proprietor of or a partner in a partnership that is a qualified life sciences company or a shareholder of a New York S corporation that is a qualified life sciences company, and is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referred to in subdivision (e) of this section, for a period of three years, as provided in subparagraph (ii) of paragraph two of this subdivision, to be computed as provided in this section, provided that no credit shall be allowed for taxable years beginning on or after January first, two thousand twenty-eight. Such credit may be claimed in the taxable year specified on the certificate of tax credit issued to the qualified life sciences company.

(2)(i) For a qualified life sciences company that employs ten or more persons during the taxable year, the amount of the credit shall be equal to fifteen percent of such qualified life sciences company's research and development expenditures in this state for the taxable year. For a qualified life sciences company that employs less than ten persons during the taxable year, the amount of the credit shall be equal to

twenty percent of such qualified life sciences company's research and development expenditures in this state for the taxable year.

(ii) The credit shall be allowed only with respect to the first taxable year during which the criteria set forth in this subdivision are satisfied, and with respect to each of the two taxable years next following (but only, with respect to each of such years, if such criteria are satisfied). Subsequent certifications of the life sciences company by the department of economic development pursuant to this section shall not extend the three taxable year time limitation on the allowance of the credit set forth in the preceding sentence.

(3) The total amount of credit allowable to a qualified life sciences company, or, if the life sciences company is properly included or required to be included in a combined report, to the combined group, taken in the aggregate, shall not exceed five hundred thousand dollars in any taxable year. If the taxpayer is a partner in a partnership that is a life sciences company or a shareholder of a New York S corporation that is a life sciences company, then the total amount of credit allowable shall be applied at the entity level, so that the total amount of credit allowable to all the partners or shareholders of each such entity, taken in the aggregate, does not exceed five hundred thousand dollars in any taxable year.

(4) No research and development expenditures made by the life sciences company and used either as the basis for the allowance of the credit provided for pursuant to this section or used in the calculation of the credit provided pursuant to this section shall be used to claim any other credit allowed pursuant to this chapter or be used in the calculation of any other credit allowed pursuant to this chapter.

(b) Maximum amount of credits. The aggregate amount of tax credits allowed under this section to taxpayers subject to tax under articles nine-A and twenty-two of this chapter in any taxable year shall be ten million dollars, and shall be allotted from the funds available for tax credits under article seventeen of the economic development law. Such aggregate amount of credits shall be allocated by the department of economic development among taxpayers in order of priority based upon the date of filing an application for allocation of life sciences research and development tax credit with such department. If the total amount of allocated credits applied for in any particular year exceeds the

aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

(c) Definitions. As used in this section the following terms shall have the following meanings:

(1) "Certificate of tax credit" means the document issued to a qualified life sciences company by the department of economic development, after the department of economic development has verified that such life sciences company has met all applicable criteria in this section to be eligible for the life sciences research and development tax credit allowed under this section, including but not limited to verifying that the life sciences company is a new business. The certificate shall be issued annually if such criteria are satisfied and shall specify the exact amount of the life sciences research and development tax credit that may be claimed by such qualified life sciences company, pursuant to this section, and shall specify the taxable year in which such credit may be claimed.

(2) "New business" means any business that qualifies as a new business under either paragraph (f) of subdivision one of section two hundred ten-B or paragraph ten of subsection (a) of section six hundred six of this chapter.

(3) "Qualified life sciences company" means a life sciences company, as defined in subdivision eleven of section three hundred fifty-two of the economic development law, that has been certified by the department of economic development as a life sciences company and is a new business. Provided however, for purposes of the credit authorized under this section, the department of economic development shall not certify as a life sciences company any corporation, partnership, limited partnership, or other entity that has been within the immediately preceding sixty months a related person to an entity that is a life sciences company or an entity that is engaged in scientific research and development as defined in subdivision twenty-two of section three hundred fifty-two of the economic development law.

(4) "Research and development expenditures" means qualified research expenses as defined in subsection (b) of section 41 of the internal revenue code, provided, however, that such qualified research expenses shall not include amounts under subparagraph (B) of paragraph 1 of

subsection (b) of section 41 of the internal revenue code and as further described in paragraph 3 of subsection (b) of section 41 of the internal revenue code. If section 41 of the internal revenue code has expired, then the research and development expenses shall be calculated as if the federal research and development credit structure and definition in effect in section 41 in federal tax year two thousand nine were still in effect.

(5) "Related person" means a related person as defined in subparagraph (C) of paragraph three of subsection (b) of section 465 of the internal revenue code. For this purpose, a "related person" shall include an entity that would have qualified as a "related person" if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate.

(d)(1) For purposes of this section, in order to be eligible for the life sciences research and development tax credit allowed under this section, a life sciences company must be issued a certificate of tax credit by the department of economic development. The department of economic development shall verify that such life sciences company has met all applicable eligibility criteria in this section before issuing a certificate of tax credit, including but not limited to verifying that the life sciences company is a new business.

(2) The commissioner of economic development, after consulting with the commissioner, shall promulgate regulations by October thirty-first, two thousand seventeen to establish procedures for the allocation of tax credits allowed under this section. Such rules and regulations shall include provisions describing the application process for the credit allowed under this section, the due dates for such applications, the eligibility standards for qualified life sciences companies, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers to substantiate to the department the amount of tax credits allocated to such taxpayers, and such other provisions as deemed necessary and appropriate.

Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such October thirty-first, two thousand seventeen deadline.

(e) Cross-references. For application of the credit provided for in

this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B: subdivision 52.

(2) article 22: section 606: subsection (hhh).

(f) Notwithstanding any provision of this chapter, (i) employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for certification submitted to the department of economic development, and (ii) the commissioner and the commissioner of the department of economic development may release the names and addresses of any taxpayer claiming the credit allowed under this section and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims such credit because it is a member of a limited liability company or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

(g) For purposes of the credit allowed under this section, the number of persons employed by a qualified life sciences company during the taxable year shall be determined by ascertaining the number of such individuals employed full-time by such company, excluding general executive officers, on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year. An individual employed full-time means an employee in a job consisting of at least thirty-five hours per week, or two or more employees who are in jobs that together constitute the equivalent of a job of at least thirty-five hours per week (full-time equivalent).

* NB There are 2 § 43's

*** § 43. Single member limited liability companies and eligibility for tax credits.** A limited liability company that has a single member and is disregarded as an entity separate from its owner for federal income tax

purposes (without reference to any special rules related to the imposition of certain federal taxes, including but not limited to certain employment and excise taxes) shall be disregarded as an entity separate from its owner for purposes of determining whether or not the taxpayer that is the single member of such limited liability company satisfies the requirements to be eligible for any tax credit allowed under article nine, nine-A, twenty-two or thirty-three of this chapter or allowed under article thirty-two of this chapter prior to the repeal of such article. Such requirements, including but not limited to any necessary certification, employment or investment thresholds, payment obligations, and any time period for eligibility, shall be imposed on the taxpayer and the determination of whether or not such requirements have been satisfied and the computation of the credit shall be made by deeming such taxpayer and such limited liability company to be a single entity. If the taxpayer is the single member of more than one limited liability company that is disregarded as an entity separate from its owner, the determination of whether or not the requirements to be eligible for any tax credit allowed under article nine, nine-A, twenty-two or thirty-three of this chapter or allowed under article thirty-two of this chapter prior to the repeal of such article have been satisfied and the computation of the credit shall be made by deeming such taxpayer and such limited liability companies to be a single entity.

* NB There are 2 § 43's

§ 44. Employer-provided child care credit. (a) General. A taxpayer subject to tax under article nine-A, twenty-two, or thirty-three of this chapter shall be allowed a credit against such tax in an amount equal to two hundred percent of the portion of the credit that is allowed to the taxpayer under section 45F of the internal revenue code that is attributable to (i) qualified child care expenditures paid or incurred with respect to a qualified child care facility with a situs in the state, and to (ii) qualified child care resource and referral expenditures paid or incurred with respect to the taxpayer's employees working in the state. The credit allowable under this subdivision for any taxable year shall not exceed five hundred thousand dollars. If the

entity operating the qualified child care facility is a partnership or a New York S corporation, then such cap shall be applied at the entity level, so the aggregate credit allowed to all the partners or shareholders of such entity in a taxable year does not exceed five hundred thousand dollars.

(b) Credit recapture. If there is a cessation of operation or change in ownership, as defined by section 45F of the internal revenue code relating to a qualified child care facility with a situs in the state, the taxpayer shall add back the applicable recapture percentage of the credit allowed under this section in accordance with the recapture provisions of section 45F of the internal revenue code, but the recapture amount shall be limited to the credit allowed under this section.

(c) Reporting requirements. A taxpayer that has claimed a credit under this section shall notify the commissioner of any cessation of operation, change in ownership, or agreement to assume recapture liability as such terms are defined by section 45F of the internal revenue code, in the form and manner prescribed by the commissioner.

(d) Definitions. The terms "qualified child care expenditures", "qualified child care facility", "qualified child care resource and referral expenditure", "cessation of operation", "change of ownership", and "applicable recapture percentage" shall have the same meanings as in section 45F of the internal revenue code.

(e) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) article 9-A: section 210-B, subdivision 53;
- (2) article 22: section 606(i), subsections (i) and (jjj);
- (3) article 33: section 1511, subdivision (dd).

§ 45. Empire state digital gaming media production credit. (a) Allowance of credit. (1) A taxpayer which is a digital gaming media production entity engaged in qualified digital gaming media production, or who is a sole proprietor of or a member of a partnership, which is a digital gaming media production entity engaged in qualified digital gaming media production, and is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax

to be computed as provided herein for taxable years beginning on or after January first, two thousand twenty-three and before January first, two thousand twenty-eight.

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a taxpayer who is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation) of twenty-five percent and the qualified digital gaming media production costs of one or more qualified digital gaming media productions.

(3) Qualified digital gaming media production costs for a qualified digital gaming media production incurred and paid in this state but outside such metropolitan commuter transportation district as defined in section twelve hundred sixty-two of the public authorities law shall be eligible for a credit of ten percent of such eligible production costs in addition to the credit specified in paragraph two of this subdivision.

(4) All applicants to this program are required, as a condition of receiving the credit, to include in the credits of each digital game development media production language and a logo to be provided by the governor's office of motion picture and television development acknowledging the state's role in the creation of the production.

(5) A qualified digital gaming media production that has applied for credit under the provisions of this section shall, as a condition for the granting of the credit, file a diversity plan with the department of economic development outlining specific goals for hiring a diverse workforce. The commissioner of economic development shall promulgate regulations implementing the requirements of this paragraph, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, to ensure compliance with the provisions of this paragraph. The department of economic development shall review each submitted plan as to whether it meets the requirements established by the commissioner of economic development, and shall verify that the applicant has met or made good-faith efforts in achieving these goals.

(b) Allocation of credit. The aggregate amount of tax credits allowed under this section, subdivision fifty-five of section two hundred ten-B and subsection (nnn) of section six hundred six of this chapter in any

taxable year shall be five million dollars. Such credit shall be allocated by the department of economic development in order of priority based upon the date of filing an application for allocation of digital gaming media production credit with such office. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent taxable year. Provided, however, that for taxable years beginning on or after January first, two thousand twenty-three, if the total amount of allocated credits applied for in any particular year is less than the aggregate amount of tax credits allowed for such year under this section, any unused portion may be carried over and added to the aggregate amount of credits allowed in the next succeeding taxable year or years.

(c) Definitions. As used in this section:

(1) "Qualified digital gaming media production" means: (i) a website, the digital media production costs of which are paid or incurred predominately in connection with (A) video simulation, animation, text, audio, graphics or similar gaming related property embodied in digital format, and (B) interactive features of digital gaming (e.g., links, message boards, communities or content manipulation); (ii) video or interactive games produced primarily for distribution over the internet, wireless network or successors thereto; and (iii) animation, simulation or embedded graphics digital gaming related software intended for commercial distribution regardless of medium; provided, however, that the qualified digital game development media productions described in subparagraphs (i) through (iii) of this paragraph must have digital media production costs equal to or in excess of fifty thousand dollars per production. A qualified digital gaming media production does not include a website, video, interactive game or software that is used predominately for: electronic commerce (retail or wholesale purposes other than the sale of video interactive games), gambling (including activities regulated by a New York gaming agency), or political advocacy purposes.

(2) "Digital gaming media production costs" means any costs for wages or salaries paid to individuals, other than actors or writers, directly employed for services performed by those individuals directly and

predominantly in the creation of a digital gaming media production or productions. Up to two hundred thousand dollars in wages and salaries paid to such employees, other than actors and writers, directly employed shall be used in the calculation of this credit. Digital gaming media production costs include but shall not be limited to payments for services performed directly and predominantly in the development (including concept and prototype creation), design (including narrative direction and sound design), production (including testing and encoding), editing (including bug fixing) and compositing (including the integration of digital files for interaction by end users) of digital gaming media. Digital gaming media production costs shall not include expenses incurred for the distribution, marketing, promotion, or advertising content generated by end users, other costs not directly related to the creation, production or modification of digital gaming media or costs used by the taxpayer as a basis of the calculation of any other tax credit allowed under this chapter. In addition, wages related to the creation of digital gaming media for any person who predominantly serves in a corporate capacity in the role of chief executive officer, chief financial officer, president, treasurer or similar corporate position shall not be included as digital gaming media production costs if the digital gaming media production entity has more than ten employees. Wages paid to a person serving in such a role for the digital gaming media production entity shall also not be included if the person was employed by a related person of the digital gaming media production entity within sixty months of the date the digital gaming media production entity applied for the tax credit certificate described in subdivision (d) of this section. For purposes of the preceding sentence, a related person shall have the same meaning as the term "related person" in section four hundred sixty-five of the internal revenue code. Furthermore, any income or other distribution to any individual including, but not limited to, licensing or royalty fees, who holds an ownership interest in a digital gaming media production entity, whether or not such individual is serving in the role of chief executive officer, chief financial officer, president, treasurer or similar position for such an entity, shall not be included as digital gaming media production costs. Up to five million dollars in qualified digital gaming media production costs per production shall be used in the

calculation of this credit. Digital gaming media production costs shall not include those costs used by the taxpayer or another taxpayer as the basis calculation of any other tax credit allowed under this chapter.

(3) "Qualified digital gaming media production costs" means digital gaming media production costs only to the extent such costs are attributable to the use of property or the performance of services by any persons within the state directly and predominantly in the creation, production or modification of digital gaming related media. Such total production costs incurred and paid in this state shall be equal to or exceed fifty-one percent of total cost of an eligible production incurred and paid within and without this state.

(4) "Digital gaming media production entity" means a corporation, partnership, limited partnership or other entity or individual engaged in qualified digital game development media production.

(d) To be eligible for the empire state digital gaming media production credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development, which certificate shall set forth the amount of the credit that may be claimed and the taxable year in which it shall be claimed. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. In order to properly administer this credit, the department shall be allowed to exchange information with the department of economic development about the taxpayers claiming this credit, including information about the tax credits claimed. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation. The taxpayer shall claim the tax credit in the taxable year that begins in the year for which it is allocated credit under this section.

(e) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article nine-A: section two hundred ten-B, subdivision fifty-five.

(2) Article twenty-two: section six hundred six, subsection (i), paragraph one, subparagraph (B), clause (xlv).

(3) Article twenty-two: section six hundred six, subsection (nn).

§ 46. Restaurant return-to-work tax credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A or twenty-two of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. The amount of the credit is equal to the amount determined pursuant to section four hundred seventy-five of the economic development law. No cost or expense paid or incurred by the taxpayer which is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) Eligibility. To be eligible for the restaurant return-to-work tax credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development pursuant to subdivision two of section four hundred seventy-four of the economic development law, which certificate shall set forth the amount of the credit that may be claimed for the taxable year. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation.

(c) Tax return requirement and advance payment option. (1) The taxpayer shall be required to attach to its tax return in the form prescribed by the commissioner, proof of receipt of its certificate of tax credit issued by the commissioner of the department of economic development.

(2) Taxpayers who choose to use August thirty-first, two thousand twenty-one as the last date to calculate their average ending full-time employment and have received their certificate of tax credit by November fifteenth, two thousand twenty-one shall have the option to request an advance payment of the amount of tax credit they are allowed under this section. A taxpayer must submit such request to the department in the manner prescribed by the commissioner after it has been issued a certificate of tax credit by the department of economic development pursuant to subdivision two of section four hundred seventy-four of the

economic development law (or such certificate has been issued to a partnership, limited liability company or subchapter S corporation in which it is a partner, member or shareholder, respectively), but such request must be submitted no later than November fifteenth, two thousand twenty-one. For those taxpayers who have requested an advance payment and for whom the commissioner has determined eligible for this credit, the commissioner shall advance a payment of the tax credit allowed to the taxpayer. However, in the case of a taxpayer subject to article nine-A of this chapter, such payment shall be equal to the amount of credit allowed to the taxpayer less twenty-five dollars. Such twenty-five dollars shall represent a partial payment of tax owed by the taxpayer under article nine-A, including any fixed dollar minimum owed under paragraph (d) of subdivision one of section two hundred ten of this chapter. When a taxpayer files its return for the taxable year, such taxpayer shall properly reconcile the advance payment and any partial payment of fixed dollar minimum tax, if applicable, on the taxpayer's return.

(d) Information sharing. Notwithstanding any provision of this chapter, employees of the department of economic development and the department shall be allowed and are directed to share and exchange:

(1) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the restaurant return-to-work tax credit program;

(2) information regarding the credit applied for, allowed or claimed pursuant to this section and taxpayers that are applying for the credit or that are claiming the credit; and

(3) information contained in or derived from credit claim forms submitted to the department and applications for admission into the restaurant return-to-work tax credit program. Except as provided in paragraph two of this subdivision, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(e) Credit recapture. If a certificate of tax credit issued by the department of economic development under article twenty-five of the economic development law is revoked by such department, the amount of credit described in this section and claimed by the taxpayer prior to

that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(f) Cross references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) article 9-A: section 210-B, subdivision 56;
- (2) article 22: section 606, subsection (lll).

§ 46-a. Additional restaurant return-to-work tax credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A or twenty-two of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. The amount of the credit is equal to the amount determined pursuant to section four hundred seventy-five-a of the economic development law. No cost or expense paid or incurred by the taxpayer which is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) Eligibility. To be eligible for the additional restaurant return-to-work tax credit, the taxpayer shall have been issued a certificate of additional tax credit by the department of economic development pursuant to subdivision four of section four hundred seventy-four of the economic development law, which certificate shall set forth the amount of the credit that may be claimed for the taxable year. The taxpayer shall be allowed to claim only the amount listed on the certificate of additional tax credit for that taxable year. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of additional tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation. However, the taxpayer must be a partner, member or shareholder of such partnership, limited liability company or subchapter S corporation as of April first, two thousand twenty-two.

(c) Tax return requirement and advance payment option. (1) The taxpayer shall be required to attach to its tax return in the form prescribed by the commissioner, proof of receipt of its certificate of additional tax credit issued by the commissioner of the department of

economic development.

(2) Taxpayers shall have the option to request an advance payment of the amount of tax credit they are allowed under this section. A taxpayer must submit such request to the department in the manner prescribed by the commissioner after it has been issued a certificate of additional tax credit by the department of economic development pursuant to subdivision four of section four hundred seventy-four of the economic development law (or such certificate has been issued to a partnership, limited liability company or subchapter S corporation in which it is a partner, member or shareholder, respectively), but such request must be submitted no later than September thirtieth, two thousand twenty-two. For those taxpayers who have requested an advance payment and for whom the commissioner has determined eligible for this credit, the commissioner shall advance a payment of the tax credit allowed to the taxpayer. However, in the case of a taxpayer subject to article nine-A of this chapter, such payment shall be equal to the amount of credit allowed to the taxpayer less twenty-five dollars. Such twenty-five dollars shall represent a partial payment of tax owed by the taxpayer under article nine-A, including any fixed dollar minimum owed under paragraph (d) of subdivision one of section two hundred ten of this chapter. When a taxpayer files its return for the taxable year, such taxpayer shall properly reconcile the advance payment and any partial payment of fixed dollar minimum tax, if applicable, on the taxpayer's return.

(d) Information sharing. Notwithstanding any provision of this chapter, employees of the department of economic development and the department shall be allowed and are directed to share and exchange:

(1) information derived from tax returns or reports that are relevant to a taxpayer's eligibility to participate in the restaurant return-to-work tax credit program;

(2) information regarding the credit applied for, allowed, or claimed pursuant to this section and taxpayers that are applying for the credit or that are claiming the credit; and

(3) information contained in or derived from credit claim forms submitted to the department and applications for admission into the restaurant return-to-work tax credit program. Except as provided in paragraph two of this subdivision, all information exchanged between the

department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(e) Credit recapture. If a certificate of additional tax credit issued by the department of economic development under article twenty-five of the economic development law is revoked by such department, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(f) Cross references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) article 9-A: section 210-B, subdivision 56-a;
- (2) article 22: section 606, subsection (nnn).

*** § 47. COVID-19 capital costs tax credit.** (a) Allowance of credit. A taxpayer subject to tax under article nine-A or twenty-two of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. The amount of the credit is equal to the amount determined pursuant to section four hundred eighty-five of the economic development law. No cost or expense paid or incurred by the taxpayer which is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) Eligibility. To be eligible for the COVID-19 capital costs tax credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development pursuant to subdivision three of section four hundred eighty-four of the economic development law, which certificate shall set forth the amount of the credit that may be claimed for the taxable year. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation.

(c) Tax return requirement. The taxpayer shall be required to attach

to its tax return in the form prescribed by the commissioner, proof of receipt of its certificate of tax credit issued by the commissioner of the department of economic development.

(d) Information sharing. Notwithstanding any provision of this chapter, employees of the department of economic development and the department shall be allowed and are directed to share and exchange:

(1) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the COVID-19 capital costs tax credit program;

(2) information regarding the credit applied for, allowed or claimed pursuant to this section and taxpayers that are applying for the credit or that are claiming the credit; and

(3) information contained in or derived from credit claim forms submitted to the department and applications for admission into the COVID-19 capital costs tax credit program. Except as provided in paragraph two of this subdivision, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(e) Credit recapture. If a certificate of tax credit issued by the department of economic development under article twenty-six of the economic development law is revoked by such department, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(f) Cross references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B, subdivision 58;

(2) article 22: section 606, subsection (nnn).

* NB There are 3 § 47's

*** § 47. Grade no. 6 heating oil conversion tax credit.** (a) (1) Allowance of credit. A taxpayer that meets the eligibility requirements of subdivision (b) of this section and is subject to tax under article nine-A or twenty-two of this chapter may be eligible to claim a grade no. 6 heating oil conversion tax credit in the taxable year the

conversion is complete. The credit shall be equal to fifty percent of the conversion costs for all of the taxpayer's buildings located at a facility regulated pursuant to section 19-0302 or title ten of article seventeen of the environmental conservation law, paid by such taxpayer on or after January first, two thousand twenty-two and before January first, two thousand twenty-four. The credit cannot exceed five hundred thousand dollars per facility.

(2) A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation that meets the eligibility criteria described in subdivision (b) of this section to claim a grade no. 6 heating oil conversion tax credit. In no event may the total amount of the credit earned by the partnership, limited liability company or subchapter S corporation exceed five hundred thousand dollars for all buildings located at a New York state department of environmental conservation regulated facility.

(3) No cost or expense paid or incurred by the taxpayer that is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) Eligibility criteria. (1) To be eligible to claim a grade no. 6 heating oil conversion tax credit, a business entity must:

(i) incur expenses for the conversion from grade no. 6 heating oil fuel, as described as "conversion costs" in paragraph (1) of subdivision (c) of this section, to biodiesel heating oil or a geothermal system at any building located in New York state outside the city of New York;

(ii) submit an application to and obtain approval of such application by the New York state energy research and development authority describing the conversion and approved costs to complete such conversion;

(iii) not be principally engaged in the generation or distribution of electricity, power or energy;

(iv) be in compliance with all environmental conservation laws and regulations; and

(v) not owe past due state taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

(c) Definitions. As used in this section the following terms shall have the following meanings:

(1) Conversion costs means the equipment and labor costs associated with the design, installation and use of space heating and other energy conversion systems that are designed to or accommodate the use of biodiesel fuel or a geothermal system and, at the option of the taxpayer, the costs of completing an ASHRAE level 2 energy audit including assessment of electrification options.

(2) Biodiesel means a minimum blend of eighty-five (85) percent biodiesel, defined as fuel manufactured from vegetable oils, animal fats, or other agricultural or other products or by-products, with petrodiesel fuel commonly used for heating systems.

(3) Geothermal means a system that uses the ground or ground water as a thermal energy source/sink to heat or cool a building or provide hot water within the building.

(4) A New York state department of environmental conservation regulated facility is a facility regulated pursuant to section 19-0302 or title ten of article seventeen of the environmental conservation law.

(d) The commissioner, in consultation with the New York state energy research and development authority, will develop an application process to certify the expenses necessary for the conversion and a taxpayer will not be eligible to claim the credit unless it has completed that application process and the application has been approved by the New York state energy research and development authority.

(e) Information sharing. The department, the department of environmental conservation and the New York state energy research and development authority shall be allowed and are directed to share and exchange information regarding the information contained on the credit application for claiming the grade no. 6 heating oil conversion tax credit and such information exchanged between the department, the department of environmental conservation and the New York state energy research and development authority shall not be subject to disclosure or inspection under the state's freedom of information law.

(f) Cross references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) article 9-A: section 210-B, subdivision 58;
- (2) article 22: section 606, subsection (nnn).

* NB There are 3 § 47's

*** § 47. Suspension of certain taxes on motor fuel and Diesel motor fuel.** (a) Definitions. For purposes of this section:

(1) "Distributor" shall have the same meaning as that term is defined in subdivision one of section two hundred eighty-two of this chapter;

(2) "Motor fuel" shall have the same meaning as that term is defined in subdivision two of section two hundred eighty-two of this chapter;

(3) "Diesel motor fuel" shall mean "highway diesel motor fuel" as defined in subdivision sixteen-a of section two hundred eighty-two of this chapter;

(4) The terms "retail sale", "sale" and "use" shall have the same meanings as those terms are defined in section eleven hundred one of this chapter.

(b) Notwithstanding any other law to the contrary, the following taxes shall be suspended beginning on June first, two thousand twenty-two and ending on December thirty-first, two thousand twenty-two: (1) the taxes imposed on Diesel motor fuel by subdivision one of section two hundred eighty-two-a, and sections two hundred eighty-two-b and two hundred eighty-two-c of this chapter; (2) the taxes imposed on motor fuel by sections two hundred eighty-four, two hundred eighty-four-a and two hundred eighty-four-c of this chapter; and (3) the prepaid sales taxes imposed on motor fuel and Diesel motor fuel by subdivision (a) of section eleven hundred two of this chapter.

(c) Notwithstanding any other law to the contrary, beginning on June first, two thousand twenty-two and ending on December thirty-first, two thousand twenty-two, the state sales and use taxes imposed by sections eleven hundred five, eleven hundred nine and eleven hundred ten of this chapter shall not apply to sales or uses of motor fuel or Diesel motor fuel, and the provisions of subdivision (e), and paragraphs one and two of subdivision (m) of section eleven hundred eleven of this chapter shall be suspended. Nothing in this subdivision shall affect the application of the taxes imposed pursuant to the authority of article twenty-nine of this chapter to motor fuel or Diesel motor fuel.

(d) The taxes described in subdivisions (b) and (c) of this section shall not be included in the price of motor fuel or Diesel motor fuel

sold for the period beginning on June first, two thousand twenty-two and ending on December thirty-first, two thousand twenty-two. Any retailer that purchases motor fuel or Diesel motor fuel during such period upon which such taxes were previously paid and included in the price paid by such retailer shall be entitled to a refund or credit of such taxes.

(e) Notwithstanding any other law to the contrary, beginning on June first, two thousand twenty-two and ending on December thirty-first, two thousand twenty-two, the composite rates of tax applicable for purposes of subdivision two of section five hundred three-a and subdivision (b) of section five hundred twenty-three of this chapter shall be determined without reference to the suspension of the taxes described by subdivisions (b) and (c) of this section, but shall be computed using the respective rates in effect on May thirty-first, two thousand twenty-two.

(f) Notwithstanding any other provision of law to the contrary, on or before the fifth day each month for the period beginning July, two thousand twenty-two and ending January, two thousand twenty-three, the comptroller shall, in consultation with the director of the division of the budget, transfer from the general fund to the mass transportation operating assistance fund created by section eighty-eight-a of the state finance law, the dedicated highway and bridge trust fund established by section eighty-nine-b of such law, and the dedicated mass transportation trust fund established by section eighty-nine-c of such law, amounts equal to the revenue distributed to such funds from the taxes described in subdivisions (b) and (c) of this section in state fiscal year two thousand twenty-one--two thousand twenty-two, adjusted by the change in such amounts projected for state fiscal year two thousand twenty-two--two thousand twenty-three as if the suspension of such taxes had not occurred, as reflected in the state fiscal year two thousand twenty-two--two thousand twenty-three enacted budget.

(g) Every person engaged in the retail sale of motor fuel or Diesel motor fuel or a distributor of such fuels, shall comply with the provisions of this section by reducing the prices charged for motor fuel and Diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor or imposed on retail customers resulting from the suspension of taxes on motor fuel and Diesel motor fuel under this section.

* NB There are 3 § 47's

§ 48. Child care creation and expansion tax credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. The amount of the credit is equal to the amount determined pursuant to section three hundred ninety-four-d of the social services law and shall be claimed in the taxable year that includes the last day of the service year for which the credit is calculated. No cost or expense paid or incurred by the taxpayer that is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) Eligibility. To be eligible for the child care creation and expansion tax credit, the taxpayer shall have been issued a certificate of tax credit by the office of children and family services pursuant to section three hundred ninety-four-c of the social services law. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation.

(c) Tax return requirement. The taxpayer shall be required to attach to its tax return in the form prescribed by the commissioner, proof of receipt of its certificate of tax credit issued by the commissioner of the office of children and family services.

(d) Information sharing. Notwithstanding any provision of this chapter, employees of the office of children and family services and the department shall be allowed and are directed to share and exchange:

(1) information regarding the credit applied for, allowed or claimed pursuant to this section and taxpayers that are applying for the credit or that are claiming the credit; and

(2) information contained in or derived from credit claim forms submitted to the department. Except as provided in paragraph one of this subdivision, all information exchanged between the office of children and family services and the department shall not be subject to

disclosure or inspection under the state's freedom of information law.

(e) Credit recapture. If a certificate of tax credit issued by the office of children and family services under title one-A of article six of the social services law is revoked by such office, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(f) Cross references. For application of the credit provided for in this section, see the following provisions of this chapter:

- (1) article 9-A: section 210-B, subdivision 59;
- (2) article 22: section 606, subsection (ooo);
- (3) article 33: section 1511, subdivision (ee).

*** § 49. Newspaper and broadcast media jobs tax credit.** (a) Allowance of credit. A taxpayer subject to tax under article nine-A or twenty-two of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of the credit is equal to the amount determined pursuant to article twenty-seven of the economic development law and shall be based on the certificates of tax credit issued to eligible businesses owned by the taxpayer or by an entity of which the taxpayer is a partner or shareholder. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation shall be allowed its pro-rata share of the credit allowed for the partnership, limited liability company or subchapter S corporation. No cost or expense paid or incurred that is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) Eligibility. To be eligible to claim the newspaper and broadcast media jobs tax credit the eligible businesses owned by the taxpayer or by an entity of which the taxpayer is a partner or shareholder shall have been issued a certificate of tax credit by the department of economic development pursuant to article twenty-seven of the economic development law, which certificate or certificates shall set forth the amount of the credit that may be claimed for the taxable year. The taxpayer shall be allowed to claim only the amount or amounts listed on

the certificate or certificates of tax credit issued to eligible businesses owned by the taxpayer or by an entity of which the taxpayer is a partner or shareholder for that taxable year.

(c) Tax return requirement. The taxpayer shall be required to attach to its tax return, in the form prescribed by the commissioner, proof of receipt of its certificate or certificates of tax credit issued by the commissioner of the department of economic development.

(d) Credit recapture. If a certificate of tax credit issued by the department of economic development under article twenty-seven of the economic development law is revoked by such department, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(e) Cross references. For application of the credit provided in this section see the following provisions of this chapter:

(1) article 9-A: section 210-B, subdivision 60.

(2) article 22: section 606, subsection (ppp).

* NB There are two § 49's

*** § 49. Commercial security tax credit.** (a) Allowance of credit. For taxable years beginning on or after January first, two thousand twenty-four and before January first, two thousand twenty-nine, a taxpayer required to file a return pursuant to articles nine, nine-A or twenty-two of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. The amount of the credit is equal to the amount determined pursuant to section eight hundred forty-five-e of the executive law. No cost or expense paid or incurred by the taxpayer that is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) To be eligible for the commercial security tax credit, the taxpayer shall have been issued a certificate of tax credit by the division of criminal justice services pursuant to section eight hundred forty-five-e of the executive law, which certificate shall set forth the amount of the credit that may be claimed for the taxable year. The taxpayer shall be allowed to claim only the amount listed on the

certificate of tax credit for the taxable year. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation.

(c) Tax return requirement. The taxpayer shall be required to attach to its tax return in the form prescribed by the commissioner, proof of receipt of its certificate of tax credit issued by the division of criminal justice services.

(d) Information sharing. Notwithstanding any provision of this chapter, employees of the division of criminal justice services and the department shall be allowed and are directed to share and exchange:

(1) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the commercial security tax credit program;

(2) information regarding the credit applied for, allowed or claimed pursuant to this section and taxpayers that are applying for the commercial security tax credit program or that are claiming such credit; and

(3) information contained in or derived from credit claim forms submitted to the department and applications for admission into the commercial security tax credit program. All information exchanged between the department and the division of criminal justice services shall not be subject to disclosure or inspection under the state's freedom of information law.

(e) Credit recapture. If a certificate of tax credit issued by the division of criminal justice services under section eight hundred forty-five-e of the executive law is revoked by the division, the amount of credit described in this section and claimed by the taxpayer prior to such revocation shall be added back to tax in the taxable year such revocation becomes final.

(f) Cross references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9; section 187-r;

(2) article 9-A: section 210-B, subdivision 60;

(3) article 22: section 606, subdivision (ppp).

* NB There are two § 49's

ARTICLE 8

DEPARTMENT OF TAXATION AND FINANCE; COMMISSIONER OF TAXATION AND FINANCE

Section 170. Department of taxation and finance.

171. Powers and duties of commissioner of taxation and finance.

171-a. Deposit and disposition of revenue.

171-a*2. Statewide wage reporting system.

171-b. Verification of income.

171-c. Certain overpayments credited against past-due support.

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171-e. Certain overpayments credited against national defense/national direct, health professions or nursing student loans.

171-f. Certain overpayments credited against outstanding debts owed to a state agency.

171-g. Provision of income information.

171-h. State directory of new hires.

171-i. Enforcement of child support and combined child and spousal support arrears.

171-j. Verification of payroll records.

171-k. Electronic signature.

171-l. Certain overpayments credited against outstanding tax debt owed to the city of New York.

171-m. Certain New York city tax overpayments credited against outstanding debts owed to the state of New York.

171-n. Certain overpayments credited against outstanding tax debts owed to other states.

171-p. Costs or fees imposed by the United States or other states for crediting tax overpayments against outstanding tax debts owed to the state of New York.

171-r. Brownfield credit report.

171-t. Reciprocal offset agreements with the United States or other states.

- 171-u. Verification of eligibility for STAR exemption.
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§ 170. Department of taxation and finance. 1. The existing department of taxation and finance and its present functions are continued. The head of the department of taxation and finance shall be the commissioner of taxation and finance who shall have sole charge of the administration of such department except with regard to the administration of the division of tax appeals which shall be the sole charge of the tax appeals tribunal authorized by article forty of this chapter. The commissioner of taxation and finance shall be appointed by the governor by and with the advice and consent of the senate and shall hold office as commissioner of taxation and finance until the end of the term of the governor by whom he was appointed and until his successor has been appointed and has qualified.

2. Existing divisions or bureaus in the department of taxation and finance or transferred to the department shall continue until consolidated or abolished pursuant to this section. There shall be in the department of taxation and finance a division of taxation, a division of the treasury, a division of the lottery, an office of real property tax services, and a division of tax appeals.

3. The commissioner of taxation and finance may establish such additional divisions and bureaus as he may deem necessary. He may appoint the heads of such divisions and bureaus and fix their duties and he may consolidate, alter or abolish any divisions or bureaus, except that such commissioner shall have no such authority or power with regard to the division of tax appeals.

3-a. (a) There shall be in the division of taxation a bureau of conciliation and mediation services which shall be responsible for providing conciliation conferences. Such conference shall be provided, at the option of any taxpayer or any other person subject to the provisions of this chapter or any other provision of law relating to administration of taxes, where such taxpayer or any other such person has received any written notice of a determination of tax due, a tax deficiency, a denial of a refund or credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives rise to a right to a hearing under this chapter if the time to petition for such a hearing has not elapsed. Such notice shall contain information advising the recipient of the right to have a conciliation conference.

(b) A request for a conciliation conference shall be applied for in the manner as set forth by regulation of the commissioner and, notwithstanding any provision of law to the contrary, shall suspend the running of the period of limitations for the filing of a petition protesting such notice and requesting a hearing. To discontinue the conciliation proceeding, the recipient of the notice shall make a request in writing and such person shall have ninety days from the time such request of discontinuance is made to petition the division of tax

appeals for a hearing, except that the recipient of a written notice described in paragraph (h) of this subdivision will have thirty days from the time such request of discontinuance is made to petition the division of tax appeals for a hearing. The commissioner shall notify the division of tax appeals when any person requests a conference or requests to discontinue such conference.

(c) A conciliation conferee, all of whom, unless otherwise provided by law, shall be in the classified civil service, shall conduct the conciliation conference in an informal manner and shall hear or receive testimony and evidence deemed necessary or desirable for a just and equitable result. The commissioner of taxation and finance shall have the power to delegate authority to a conferee to waive or modify penalty, interest and additions to tax to the same extent as such commissioner is permitted under this chapter.

(d) The person who requests the conference may appear and represent himself, including a member of a partnership, in any conciliation conference, or may designate the person's spouse, parent or child, or an attorney admitted to practice in the courts of record of this state, a certified public accountant licensed in this state, an enrolled agent enrolled to practice before the internal revenue service, or a public accountant licensed in this state to appear and represent him. In addition the commissioner shall promulgate rules and regulations to permit a corporation to be represented by one of its officers or an employee. The department may also allow an attorney, certified public accountant or licensed public accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent such person in a conciliation conference proceeding and, on the written request of such person, may allow any other individual to represent him. An employee of the department of taxation and finance familiar with the controversy shall also be present at such proceedings.

(e) A conciliation order shall be rendered within thirty days after the proceeding is concluded and such order shall, in the absence of a showing of fraud, malfeasance or misrepresentation of a material fact, be binding upon the department and the person who requested the conference, except such order shall not be binding on such person if such person petitions for the hearing provided for under this chapter within ninety days after the conciliation order is issued, or, for a

conciliation order affirming a written notice described in paragraph (h) of this subdivision, within thirty days after the conciliation order is issued, notwithstanding any other provision of law to the contrary.

(f) Conciliation conference orders shall not be required to be published and such orders shall not be considered as precedent or be given any force or effect in any subsequent administrative proceeding with respect to the person who requested the conference or in any other proceeding.

(g) The commissioner of taxation and finance shall collect, compile and prepare for publication statistics and other data with respect to the operations of the bureau of conciliation and mediation services, and to submit annually to the governor, the temporary president of the senate and the speaker of the assembly a report on such operations, including but not limited to, the number of conferences held, the dispositions made and the number of conferences pending.

(h) Notwithstanding any provision of law to the contrary, any person who seeks review by the bureau of conciliation and mediation services of a written notice that advises that person of (i) the proposed cancellation, revocation, or suspension of a license, permit, registration, or other credential issued under the authority of this chapter excluding a certificate of registration of a retail dealer under section four hundred eighty-a of this chapter, (ii) the denial of an application for a license, permit, registration, or other credential issued under the authority of this chapter excluding an application for registration as a retail dealer under section four hundred eighty-a of this chapter and an application to renew a certificate of authority filed pursuant to paragraph five of subdivision (a) of section one thousand one hundred thirty-four of this chapter and any other law, or, (iii) the imposition of a fraud penalty under this chapter, must request a conciliation conference within thirty days of the mailing of that notice.

4. The commissioner of taxation and finance may appoint and remove such officers, assistants and other employees as he may deem necessary for the exercise of the powers and duties of the department, all of whom shall be in the classified civil service unless otherwise provided by law; and he may prescribe their duties, and fix their compensation

within the amounts appropriated therefor. The commissioner of taxation and finance may transfer officers or employees from their positions to other positions in the department, or abolish or consolidate such positions. He shall have all powers necessary to perform the duties conferred upon him regarding the state lottery authorized by article thirty-four of this chapter. However, the commissioner of taxation and finance shall have no power to appoint or remove any personnel of the division of tax appeals nor shall such commissioner have any power or authority with regard to the operation and administration of such division including any power or authority over such division's budget. The commissioner shall furnish to the director of the division of the budget the itemized estimates of the financial needs of the division of tax appeals prepared by the tax appeals tribunal. Such itemized estimates may not be revised or altered in any manner by the commissioner.

5. The head of the division of taxation shall be the commissioner of taxation and finance who shall be appointed by the governor as provided in subdivision one of this section. No person shall be appointed as commissioner of taxation and finance unless at the time of his appointment he is a resident of the state and known to have knowledge on the subject of taxation and skill in matters pertaining thereto. Such commissioner shall devote his entire time to the duties of his office. The commissioner of taxation and finance may after notice and an opportunity to be heard, be removed by the governor for neglect of duty or misfeasance in office, and the commissioner may be removed for other cause by the senate on the recommendation of the governor. The commissioner of taxation and finance shall receive an annual salary within the amounts appropriated therefor.

6. The head of the division of the treasury shall be an officer entitled the deputy commissioner and treasurer to be appointed by and to hold office during the pleasure of the commissioner. The state treasury, the custody of monies therein and the custody of all other funds, as now or hereafter prescribed by law shall continue to be in the immediate charge of the head of such division, subject to the supervision and control of the commissioner; and the head of such division, subject to

such supervision and control, shall make the payments out of the treasury and from such funds authorized or directed by law to be made. Notwithstanding any other provision of law, expenditures relating to financial services performed by the division of the treasury as fiscal agent, trustee or sole custodian of funds, moneys or accounts of agencies, authorities or other entities, shall be charged to such agencies, authorities or other entities. Payment of such charges shall be in a manner prescribed by the commissioner and may include the withholding of interest due on any investments made for such agencies, authorities or other entities. All income derived from fees levied by the commissioner for such financial services shall be deposited by the commissioner in the miscellaneous special revenue fund, investment services account. The commissioner may assign to such division such other powers and duties of the department of taxation and finance as he may deem proper.

7. The head of the division of the lottery shall be an officer to be appointed by, and hold office during the pleasure of the commissioner of taxation and finance.

7-a. The head of the office of real property tax services shall be an officer to be appointed and hold office as provided by section two hundred three of the real property tax law.

8. The reasonable and necessary traveling and other expenses of the commissioner, deputy commissioners and other officers and employees of the department, while actually engaged in the performance of their duties, outside of the city of Albany, or if such officer or employee be in charge of or actually employed at a branch office of the department, the reasonable and necessary traveling and other expenses outside of the place in which such branch office is located, and the necessary traveling expenses incurred in the performance of their duties in the place in which their duties are performed of such officers and employees as are specifically authorized by order of the commissioner of taxation and finance, shall be paid upon the order of the comptroller upon vouchers approved by the commissioner of taxation and finance.

§ 171. Powers and duties of commissioner of taxation and finance. The commissioner of taxation and finance shall:

First. Make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of its powers and the performance of its duties under this chapter, including regulations which shall advise the public of (i) the various methods by which the department communicates tax policy and interpretations to taxpayers, tax practitioners, personnel of the department and the general public and (ii) the legal force and effect, precedential value and binding nature of each such method of communication.

Second. Assess, determine, revise, readjust and impose the corporation taxes under articles nine and nine-A of this chapter, and on and after July first, nineteen hundred twenty-one, have the power and perform the duties of the state comptroller in the collection of such taxes and the crediting of such taxes erroneously paid, as jurisdiction thereof is vested in such commissioner by section one hundred seventy-six of this chapter.

Third. On and after July first, nineteen hundred twenty-one, have the powers and perform the duties of the state comptroller in relation to the assessment, determination and collection of the tax on transfers of property, as jurisdiction thereof is vested in such commissioner by section one hundred seventy-six of this chapter.

Fourth. On and after July first, nineteen hundred twenty-one, have the powers and perform the duties of the state comptroller in the collection of the tax on transfers of stock under article twelve of this chapter, as jurisdiction thereof is vested in such commissioner by section one hundred seventy-six of this chapter.

Fifth. On and after July first, nineteen hundred twenty-one, have the power and perform the duties of the state comptroller in the assessment, determination, review, readjustment and collection of taxes upon and with respect to personal income, as jurisdiction thereof is vested in

such commissioner by section one hundred seventy-six of this chapter.

Sixth. Administer, supervise and enforce the tax on mortgages as provided in article eleven of this chapter.

Eighth. Take testimony and proofs, under oath, with reference to any matter within the line of his official duty. A deputy tax commissioner and such other officials and employees of the department of taxation and finance as may be nominated by such commissioner by resolution recorded in the minutes may be designated for the purpose of taking such testimony and proofs.

Ninth. Require from all state and local officers such information as may be necessary for the proper discharge of its duties.

Tenth. Hold meetings at an office to be assigned in one of the state buildings at Albany, at such times as may be fixed by such commissioner or by adjournment thereof, or at such other places as he may designate.

Eleventh. Compile and publish statistics relating to state and local taxation.

Twelfth. Make investigations of the general system of state taxation from time to time.

Thirteenth. Inquire into the provisions of the laws of other states and jurisdictions; to confer with tax commissioners of other states regarding the most effectual and equitable methods of taxation, and particularly regarding the best methods of avoiding conflicts and duplication of taxation, and to recommend to the legislature such measures as will bring about uniformity of methods, harmony and co-operation between the different states and jurisdictions in matters of taxation.

Fourteenth. Perform the other powers and duties conferred upon it by law.

Fifteenth. Have authority to compromise any taxes or other impositions or any warrant or judgment for taxes or other impositions administered by the commissioner, and the penalties and interest in connection therewith, if the tax debtor has been discharged in bankruptcy, is shown by proofs submitted to be insolvent, or shows by proofs that collection in full would cause the tax debtor undue economic hardship, provided that the amount payable in compromise reasonably reflects collection potential or is otherwise justified by the proofs offered by the tax debtor. Provided, further, the commissioner shall not accept any amount payable in compromise that would undermine compliance with the taxes or other impositions administered by the commissioner, nor shall the commissioner enter into any offer of compromise that would be adverse to the best interests of the state. Where the amount owing for taxes or other impositions or the warrant or judgment, exclusive of any penalties and interest, is more than one hundred thousand dollars, such compromise shall be effective only when approved by a justice of the supreme court. The commissioner shall promulgate regulations defining what constitutes undue economic hardship. The inability to maintain an affluent or luxurious lifestyle shall not constitute undue economic hardship.

Fifteenth-a. Notwithstanding any other provision of this chapter: (i) the commissioner may grant the relief described in paragraph (iii) of this subdivision to a limited partner of a limited partnership (but not a partner of a limited liability partnership) or a member of a limited liability company if such limited partner or member demonstrates to the satisfaction of the commissioner that such limited partner's or member's ownership interest and the percentage of their distributive share of the profits and losses of such limited partnership or limited liability company are each less than fifty percent, and such limited partner or member was not under a duty to act, and did not act, for such limited partnership or limited liability company in complying with any requirement of the taxes imposed under article twenty-eight of this chapter and pursuant to the authority of article twenty-nine of this chapter. Provided, however, the commissioner shall deny an application for relief if: (A) such limited partner or member had a duty to act or has acted on behalf of such limited partnership or limited liability company in complying with any requirement of the taxes imposed under

article twenty-eight of this chapter and pursuant to the authority of article twenty-nine of this chapter; (B) such limited partner or member has been convicted of a crime provided in this chapter; (C) such limited partner or member has a past-due tax liability, as such term is defined in section one hundred seventy-one-v of this article; (D) approval of such application would undermine compliance with the taxes or other impositions administered by the commissioner; or (E) approval of such application would be adverse to the best interests of the state.

(ii) The relief described in paragraph (iii) of this subdivision shall not be provided unless a limited partner or member submits a properly completed application for relief on a form prescribed by the commissioner. The information provided in such application must be true and complete in all material respects. Providing materially false or fraudulent information on such application shall disqualify such limited partner or member for the relief described in paragraph (iii) of this subdivision, shall void any agreement with the commissioner with respect to such relief, and shall result in such limited partner or member bearing strict liability for the total amount of tax, interest and penalty owed by their respective limited partnership or limited liability company under article twenty-eight of this chapter and pursuant to the authority of article twenty-nine of this chapter.

(iii) If the commissioner approves such application, such limited partner or member shall be liable for the percentage of the original liability under article twenty-eight of this chapter and pursuant to the authority of article twenty-nine of this chapter of their respective limited partnership or limited liability company that reflects such limited partner's or member's ownership interest or distributive share of the profits and losses of such limited partnership or limited liability company, whichever is higher. Such original liability shall include any interest accrued thereon up to and including the date of payment by such limited partner or member at the underpayment rate set by the commissioner pursuant to section eleven hundred forty-two of this chapter, and shall be reduced by the sum of any payments made by the limited partnership or limited liability company. Provided, however, such limited partner or member shall not be liable for any penalty owed by such limited partnership or limited liability company or any other partner or member of such limited partnership or limited liability

company; and provided further that the sum of the amounts owed by all of the persons required to collect tax of a limited partnership or limited liability company shall not exceed the total liability of such limited partnership or limited liability company.

(iv) The denial of a limited partner's or member's application for relief shall not be reviewable by the division of tax appeals, but may be reviewed pursuant to article seventy-eight of the civil practice law and rules by a proceeding commenced within four months of such denial in the county where the commissioner has their principal office.

(v) Any payment made by a limited partner or member in excess of such limited partner's or member's percentage of ownership or distributive share, whichever is higher, shall be deemed a payment by the respective limited partnership or limited liability company, and such limited partner or member shall not be entitled to a refund of such amount.

Sixteenth. Have authority to compromise any taxes or any warrant or judgment for taxes imposed by this chapter and the penalties and interest in connection therewith of a tax debtor which is a domestic railroad corporation, or its trustee or trustees in bankruptcy, (1) in connection with its qualification as a railroad redevelopment corporation or the acquisition of its facilities by a railroad redevelopment corporation or (2) if said domestic railroad corporation is principally engaged in the transportation of passengers and at the time of said compromise it is the debtor in a reorganization proceeding pursuant to the United States bankruptcy act and said compromise is approved by the bankruptcy court.

Seventeenth. Have authority to release any real and personal property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest, or vacate such warrant, upon such conditions as he or she may require, if he or she finds that the interests of the state will not thereby be jeopardized. Such release or vacating of the warrant may be recorded in the office of any recording officer (including the department of state) in which such warrant has been filed. When the warrant is vacated, the recording officer (including the department of state) shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

Eighteenth. Have authority to enter into a written agreement with any person, relating to the liability of such person (or of the person for whom he acts) in respect of any tax or fee imposed by the tax law or by a law enacted pursuant to the authority of the tax law or article two-E of the general city law, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact: (a) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this state, and (b) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, cancellation, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded. As used in this paragraph the term "person" includes an individual, trust, estate, partnership and corporation.

Eighteenth-a. Have authority to compromise civil liability, with such qualifications and limitations as may be established pursuant to such rules and regulations as the commissioner may prescribe, where such liability arises under a tax or other imposition which is administered by the commissioner, at any time prior to the time the tax, other imposition or administrative action becomes finally and irrevocably fixed and no longer subject to administrative review. Upon acceptance of an offer in compromise by the commissioner, the matter may not be reopened except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The attorney general may compromise any such liability after reference to the department of law for prosecution or defense at any time prior to the time the tax, other imposition or administrative action taken by the commissioner is no longer subject to judicial review. Whenever a compromise is made by the commissioner of any such liability, there shall be placed on file in the office of the commissioner the opinion of the counsel for such department, with his or her reasons therefor, with a statement of: (a) the amount of tax or other imposition and any other issues which may be the subject of such compromise, (b) the amount of interest, additions to the tax, or penalty imposed by law on the taxpayer or other persons against whom the administrative action was taken by the department, and

(c) the amount actually paid in accordance with the terms of the compromise. Notwithstanding the preceding sentence, no such opinion shall be required with respect to the compromise of any civil liability in which the unpaid amount of tax or other imposition which was the subject of the administrative action (including any interest, additions to tax, or penalty) is less than fifty thousand dollars.

Eighteenth-b. Where the filing requirement arises under article twenty-two of this chapter or under a law enacted pursuant to the authority of article thirty or thirty-A of this chapter, have authority to require a husband and wife whose federal income tax liabilities are determined on a joint federal return and who have not filed a joint New York income tax return to file separate income tax returns, in which case their income tax liabilities shall be separate. Such authority shall be exercised only where one of such persons demonstrates, to the satisfaction of the commissioner, that (a) the address or whereabouts of his or her spouse is unknown to him or her, (b) reasonable efforts have been made by him or her to locate such spouse, and (c) good cause existed for the failure to file a joint New York income tax return.

Eighteenth-c. Where the filing requirement arises under article twenty-two of this chapter or under a law enacted pursuant to the authority of article thirty or thirty-A of this chapter, have authority to require a husband and wife whose federal income tax liabilities are determined on a joint federal return and who have not filed a joint New York income tax return to file separate income tax returns, in which case their income tax liabilities shall be separate. Such authority shall be exercised only where one of such persons demonstrates, to the satisfaction of the commissioner, that (a) his or her spouse has refused to sign a joint New York income tax return, (b) reasonable efforts have been made by him or her to have such spouse sign a joint New York income tax return, (c) there exists objective evidence of alienation of such person from his or her spouse such as a judicial order of protection, legal separation under a decree of divorce or separate maintenance, separation under a written separation agreement or judicial decree of separation, living apart at all times during the twelve months immediately preceding the application for exercise of authority under

this provision, the commencement of an action for divorce, or the commencement of proceedings in family court which evidence such alienation, and (d) good cause existed for the failure to file a joint New York income tax return.

Eighteenth-d. (a) Have authority to compromise civil liability, with such qualifications and limitations as may be established pursuant to such rules and regulations as the commissioner may prescribe, for a taxpayer's spousal share of liability arising from a joint income tax return, filed under article twenty-two of this chapter or under a law enacted pursuant to the authority of article thirty or thirty-A of this chapter, where the following conditions are met:

(1) the taxpayer and spouse filing the joint return are, at the time of the offer in compromise, separated under a decree of divorce or separate maintenance, or a written separation agreement, or a judicial decree of separation, or the taxpayer at the time of the offer in compromise is not considered as married within the meaning of section 7703(b) of the internal revenue code (relating to certain married individuals living apart), and

(2) it is demonstrated to the satisfaction of the commissioner that the collection of the spousal share of liability from the taxpayer cannot be accomplished within a reasonable period of time without imposing substantial economic hardship on the taxpayer.

(b) Upon acceptance of an offer in compromise under this subdivision by the commissioner, the matter may not be reopened except upon a showing of fraud, malfeasance or misrepresentation of a material fact.

(c) Whenever a compromise is made by the department of any such liability, there shall be placed on file in the office of the commissioner the opinion of the counsel for the department, with his reasons therefor with a statement of:

(1) the amount of tax assessed,

(2) the amount of interest, additions to the tax, or penalty imposed by law on the taxpayer and spouse against whom the tax is assessed, and

(3) the amount actually paid in accordance with the terms of the compromise.

Notwithstanding the preceding sentence, no such opinion shall be required with respect to the compromise of any civil liability in which

the unpaid amount of tax assessed (including any interest, additions to tax, or penalty) is less than twenty-five thousand dollars.

(d) Spousal share of liability. For purposes of this subdivision, the spousal share of liability shall be determined by multiplying the joint and several liability arising from the joint return by a fraction, the numerator of which is the tax for the taxable year at issue determined separately for the spouse, and the denominator of which is the sum of the taxes for such taxable year determined separately for the spouse and for the taxpayer.

(e) A compromise under this subdivision as to a taxpayer's spousal share of liability arising from a joint income tax return shall not compromise the joint and several liability of the spouse with respect to that return.

Nineteenth. Have authority to provide by regulation (1) that in any determination, assessment, collection, refund or credit under this chapter, a fractional part of a dollar may be disregarded unless it amounts to fifty cents or more, in which case it shall be increased to one dollar, and (2) that any person making a return, report or other statement required to be filed with it under this chapter, may elect with respect to any amount required to be shown thereon, if such amount is other than a whole dollar amount, either to disregard the fractional part of a dollar or to disregard the fractional part of a dollar unless it amounts to fifty cents or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by one dollar; provided, however, that such election shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on any such return, report or other statement but shall be applicable only to the final amount required to be shown thereon.

Twentieth. Have authority, of his own motion, to abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, under articles twelve-A, eighteen, twenty or twenty-one of this chapter, if such commissioner determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due. He may also abate, of his own

motion, the unpaid portion of the assessment of any of such taxes, or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed for any of such taxes.

Twenty-third. Technical memoranda issued by the department shall advise and inform taxpayers and others of existing interpretations of laws and regulations by the department or changes to the statutory or case law of interest to the public. In no event shall technical memoranda be issued by the department in violation of the provisions of the state administrative procedure act where and to the extent that a duly promulgated rule or regulation would be required. Where and to the extent that an opinion of the counsel of the department is deemed to be of sufficient significance and general applicability to a group or group of taxpayers, such opinion shall be disseminated via a technical memorandum.

Twenty-fourth. Be required to render advisory opinions with respect to taxes administered by such commissioner within ninety days of the receipt of a petition for such an opinion. Such ninety day period may be extended by such commissioner, for good cause shown, to no more than thirty additional days. Such advisory opinion shall be rendered to any person subject to a tax or liability under this chapter or claiming exemption from such tax or liability and may, in the discretion of the commissioner, be rendered to any non-taxpayer, including but not limited to a local official, petitioning on behalf of a local jurisdiction, or the head of a state agency, petitioning on behalf of the agency. Such advisory opinions, which shall be published and made available to the public, shall not be binding upon such commissioner except with respect to the person to whom such opinion is rendered provided, however, that a subsequent modification by such commissioner of such an advisory opinion shall operate prospectively only. A petition for an advisory opinion shall contain a specific set of facts and be submitted in such form as may be prescribed by such commissioner and subject to such rules and regulations as such commissioner may promulgate with respect to the

procedures for submission of such a petition. Nothing herein shall be construed to limit or otherwise alter the rights of any applicant for a declaratory ruling pursuant to section two hundred four of the state administrative procedure act.

Twenty-fifth. a. With respect to the income to be used in the computation of school aid payable in the school year nineteen hundred ninety-four--ninety-five and thereafter, be required to design, develop and implement a permanent computerized statewide school district address match and income verification system in regard to each school district's valuation of total New York adjusted gross income as determined by the department, for use in determining state aid to education. The department shall promulgate rules and regulations to effect the provisions of this paragraph within ninety days of the enactment of the chapter of the laws of nineteen hundred ninety-four amending this paragraph. Commencing September first, nineteen hundred ninety-seven, the commissioner and the commissioner of education, subject to the approval of the director of the budget shall be required to enter into a cooperative agreement by September first of each year, which will govern the validation and correction and completion of the total New York adjusted gross income of school districts until September first of the following year. Such agreement shall include, but not be limited to: (i) procedures to improve the accuracy of school district income data, in a manner which gives appropriate recognition to computerized processing capabilities, administrative feasibility of manual processes and confidentiality implications; (ii) procedures to verify the school district codes reported by taxpayers; (iii) procedures to correct identified inaccuracies; (iv) procedures to assign school district codes based on the permanent residence addresses of taxpayers who failed to complete the school district code; (v) the schedule for the transmittal of electronic data between the agencies, as necessary, to implement such system; and (vi) beginning in the nineteen hundred ninety-six state fiscal year, procedures for the review process provided for in paragraph c of this subdivision. All state departments and agencies, and school districts and other local governments and agencies, shall cooperate with the parties to such agreement in its implementation.

b. 1. Any correction, pursuant to this paragraph, of verified inaccuracies of income data shall only result in the removal of such returns from the identified school district.

2. All state departments and agencies, and school districts and other local governments and agencies, shall cooperate with the parties to such agreement in the implementation of the review process provided pursuant to this paragraph.

c. 1. With respect to income used in the computation of school aid payable in the school years nineteen hundred ninety-eight--ninety-nine and thereafter, be required to design, develop and implement a process whereby school districts may request a review of the assignment of taxpayer addresses to their school district. Procedures for such a review process shall be included in the cooperative agreement entered into pursuant to paragraph a of this subdivision.

2. School districts requesting a review in accordance with the provisions of this paragraph shall be required, in consultation with the district superintendent of schools for the supervisory district in which the school district is located, appointed pursuant to section nineteen hundred fifty of the education law, to submit to the commissioner of education evidence in support of a contention that the assignment of tax returns to their district is inaccurate. Identified school districts may be required to review ordered listings, prepared by the department or an authorized vendor contracted by the department, of the permanent resident address of selected taxpayers who filed personal income tax returns with the department reporting a school district code or address which indicates that the taxpayer was a resident of such identified school district at the close of the taxable year for which the return was filed. In no case shall ordered address listings for school district review include those addresses which the school district had the opportunity to review pursuant to paragraph a of this subdivision. District superintendents of schools appointed pursuant to section nineteen hundred fifty of the education law, having an identified school district within their supervisory district, shall be required to verify any suspected inaccuracies indicated by an identified district as a

result of the district's review of ordered address listings pursuant to this paragraph.

3. Any correction, pursuant to this paragraph, of verified inaccuracies of income data shall only result in the removal of such returns from the identified school district.

4. All state departments and agencies, and school districts and other local governments and agencies, shall cooperate with the parties to such agreement in the implementation of the review process provided pursuant to this paragraph.

Twenty-sixth. a. Set the overpayment and underpayment rates of interest for purposes of articles twelve-A, eighteen, twenty and twenty-one of this chapter. Such rates shall be the overpayment and underpayment rates of interest set pursuant to subsection (e) of section one thousand ninety-six of this chapter, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid (other than overpayments under such article twenty and not including reimbursements, if any, under any of such articles) on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect. In computing the amount of any interest required to be paid under such articles by such commissioner or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

b. Cross-reference. For provisions relating to the power of the commissioner of taxation and finance to abate small amounts of interest, see subdivision twentieth of this section.

Twenty-seventh. Have authority, upon agreement with the state comptroller, to act as an agent for the state comptroller for the purposes of crediting the payment of state money to any claimant against

the amount of a past-due legally enforceable debt, as defined in section one hundred seventy-one-f of this article, owed by such claimant to a state agency, as defined in section one hundred seventy-one-f of this article. All the provisions of section one hundred seventy-one-f of this article shall be applicable to the crediting of the payments of state money made in accordance with the authority granted in this subdivision, with such modifications as may be necessary to adapt such language to such crediting and shall apply with the same force and effect as if those provisions had been set forth in full in this section and had expressly referred to such crediting, except to the extent any provision thereof is either inconsistent or is not relevant to such crediting. This section shall not be deemed to abrogate or limit in any way the powers and authority of the state comptroller to set off debts owed the state against payments from the state under the constitution of the state or any other law.

Twenty-eighth. a. Have the authority to postpone certain deadlines for a period of up to ninety days, or longer when necessary to align with relief provided by the Internal Revenue Service pursuant to section seven thousand five hundred eight-A of the internal revenue code, for a taxpayer who is determined to be affected by a presidentially declared disaster or by a disaster emergency declared by the governor. Any extension period provided pursuant to the authority in this subdivision shall be disregarded in determining under the tax law, or under a law enacted pursuant to the authority of the tax law or former article 2-E of the general city law where administered by the commissioner, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such taxpayer:

1. Whether any of the acts described in paragraph one of subsection (a) of section six hundred ninety-six of the tax law in relation to the personal income tax (or any comparable acts with respect to taxes under this chapter other than the personal income tax) were performed within the time prescribed therefor, and

2. The amount of any credit or refund.

b. Special rule for overpayments. 1. Paragraph a of this subdivision shall not apply for purposes of determining the amount of interest on any overpayment of tax.

2. If a taxpayer is entitled to the benefits of paragraph a of this subdivision with respect to any return, amended return, or claim for credit or refund, and such return, amended return or claim is timely filed (determined after the application of this subdivision), paragraph three of subsection (a) and subsection (c) of section six hundred eighty-eight and paragraph three of subsection (a) and subsection (c) of section one thousand eighty-eight of this chapter shall not apply.

c. Definitions. 1. Presidentially declared disaster. For purposes of this subdivision, the term "presidentially declared disaster" means any disaster which, with respect to an area, resulted in a subsequent determination by the president of the United States that such area warrants assistance by the federal government under the disaster relief and emergency assistance act.

2. Taxpayer. For purposes of this subdivision, the term "taxpayer" means any person or entity required to file a return or remit any tax to the commissioner pursuant to this chapter.

d. Where a taxpayer who, pursuant to section seven thousand five hundred eight-a of the internal revenue code, is determined for federal tax purposes to be affected by a presidentially declared disaster, or who is determined to be affected by a disaster emergency declared by the governor, but the commissioner has not postponed a tax deadline pursuant to the authority in paragraph a of this subdivision due to such disaster, the commissioner may abate any amount of interest from the underpayment of any tax administered by the commissioner under this chapter that accrued for the period during which the taxpayer was unable to meet such deadline due to direct impacts of the disaster.

*** § 171-a. Deposit and disposition of revenue.** 1. All taxes, interest, penalties and fees collected or received by the commissioner

or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-B, twenty-C, twenty-D, twenty-one, twenty-two, twenty-four, twenty-four-A, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-eight-D (except as otherwise provided in section eleven hundred ninety-seven, twenty-nine-B,, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount

to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this article, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such

non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

2. Notwithstanding subdivision one of this section or any other provision of law to the contrary, the taxes imposed pursuant to sections one hundred eighty-three-a, one hundred eighty-four-a, one hundred eighty-six-c, two hundred nine-B and fifteen hundred five-a of this chapter, reduced by an amount for administrative costs, shall be deposited to the credit of the metropolitan mass transportation operating assistance account in the mass transportation operating assistance fund, created pursuant to section eighty-eight-a of the state finance law, as such taxes are received. The amount for administrative costs shall be determined by the commissioner to represent reasonable costs of the department of taxation and finance in administering, collecting, determining and distributing such taxes. Of the total revenue collected or received under such sections of this chapter, the comptroller shall retain in his hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such sections of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under provisions of such sections. The tax commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such sections.

* NB There are 2 § 171-a's

*** § 171-a. Statewide wage reporting system.** (1) The department shall design, develop, implement and operate a wage reporting system within the department utilizing information submitted by employers as defined under article eighteen of the labor law. The department is authorized to require submission of a report, in such form and in such manner as prescribed by regulations for not more frequently than four times per annum, of the name, social security account number, and gross wages paid to each employee who resides or is employed in this state, whether or not such employee is a resident for purposes of this chapter and whether or not the wages of such employee are subject to withholding of tax or payments of tax under article twenty-two of this chapter. Employers also shall report if dependent health insurance benefits are available. No report shall be filed with respect to an employee of a state or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) Such system shall be designed in a manner compatible with existing reporting requirements, to the extent possible, while remaining consistent with the goals of such system, and shall be consistent with the provisions of article eighteen of the labor law. Not later than January first, nineteen hundred ninety-six, the department shall, pursuant to regulation, begin to collect such data in such manner for the first quarter of calendar year nineteen hundred ninety-six and for all subsequent quarters.

(3) (a) Notwithstanding any law to the contrary, the commissioner of taxation and finance shall maintain cooperative agreements with the state office of temporary and disability assistance, which shall provide:

(i) for the utilization by the office of temporary and disability assistance of information obtained pursuant to subdivision one of this section, for the purpose of verifying eligibility for and entitlement to amounts of benefits under the social services law, locating absent parents or other persons legally responsible for the support of applicants or recipients of public assistance and care under the social services law and persons legally responsible for the support of a

recipient of services under section one hundred eleven-g of the social services law and, in appropriate cases, establishing support obligations pursuant to the social services law and the family court act, and for the purpose of evaluating the effect on earnings of participation in employment or training programs authorized pursuant to the social services law by current recipients of public assistance and care and by former recipients of public assistance and care, such agreement shall further provide to the degree required by federal law for the commissioner and the office of temporary and disability assistance to provide information obtained pursuant to subdivision one of this section to the federal social security administration or to public agencies in other states which administer programs under the food stamp act of nineteen hundred seventy-seven or title I, II, IV-A, IV-D, X, XIV, XVI, or XIX of the federal social security act and to take such other steps as may be required by section one thousand one hundred thirty-seven of the social security act or federal regulations promulgated thereunder; and

(ii) for the utilization by the office of temporary and disability assistance of information obtained pursuant to subdivision one of this section, with respect to the parents, the stepparents, the child and the siblings of the child who were living in the same household as a child who is in the custody, care and custody or custody and guardianship of a local social services district or of the office of children and family services during the month that the court proceedings leading to the child's removal from the household were initiated, or the written instrument transferring care and custody of the child pursuant to the provisions of section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law was signed, provided however, that the office of temporary and disability assistance shall only use the information obtained pursuant to this subdivision, for the purpose of determining the eligibility of such child for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act. Notwithstanding any other provision of law, the office of temporary and disability assistance is authorized to share information obtained pursuant to this subdivision with any applicable social services district, provided however, that if such information is shared, that such social services district shall

only use the information obtained for the purpose of determining the eligibility of such child for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act.

(b) Notwithstanding any law to the contrary and not later than ninety days after the effective date of this paragraph, the commissioner of taxation and finance shall enter into a cooperative agreement with the commissioner of social services for the delivery to the state department of social services of information obtained pursuant to subdivision one hereof, which information shall be utilized for the purpose of enabling such department to fulfill obligations and responsibilities otherwise incumbent upon the state department of labor under section one hundred twenty-four of the federal family support act of nineteen hundred eighty-eight by giving the federal parent locator service, maintained by the federal department of health and human services, prompt access to certain wage information for use by such latter department for the purpose of complying with such act.

(4) Notwithstanding any law to the contrary and not later than September first, nineteen hundred ninety-seven, the commissioner shall enter into a cooperative agreement with the state department of labor to allow the information obtained by the department pursuant to subdivision one of this section to be made available to the department of labor, or other individuals designated by the commissioner of labor, for administration of such department's employment security programs, public assistance work programs, or for other purposes deemed appropriate by the commissioner of labor consistent with the provisions of the labor law, as well as for the evaluation of the effect on earnings of participation in training programs with respect to which the department of labor has reporting, monitoring, administering, or evaluating responsibilities.

5. Notwithstanding any provision of law to the contrary, the commissioner shall enter into a cooperative agreement with the department of health, which agreement shall provide for the utilization of information obtained pursuant to subdivision one of this section, for the purpose of verifying eligibility for child health insurance plan subsidy payments and required premium payments under sections two

thousand five hundred ten and two thousand five hundred eleven of the public health law, and for the purpose of verifying eligibility for the program for elderly pharmaceutical insurance coverage under title three of article two of the elder law, when requested by the department of health.

(6) Notwithstanding any provision of law to the contrary, the commissioner shall enter into a cooperative agreement with the office of vocational and educational services for individuals with disabilities of the education department, the commission for the blind and any other state vocational rehabilitation agency, which agreement shall provide for the utilization of information obtained pursuant to subdivision one of this section, for purposes of obtaining reimbursement from the federal social security administration for expenditures made by such office, commission or agency on behalf of disabled individuals who have achieved economic self-sufficiency.

(6-a) Notwithstanding any provision of law to the contrary, the commissioner shall enter into a cooperative agreement with the New York state higher education services corporation, which agreement shall provide for the utilization of information obtained pursuant to subdivision one of this section, for purposes of default prevention and collection of defaulted education loan debt, including judgments, owed to the federal or New York state government that is being collected by the New York state higher education services corporation.

(6-b) Notwithstanding any provision of law to the contrary, the commissioner shall enter into a cooperative agreement with the state comptroller, which agreement shall provide for the utilization of information obtained pursuant to subdivision one of this section, for purposes of determining the amount a retired member of a retirement system or pension plan administered by the state or any of its political subdivisions who returns to public employment has earned for the purposes of sections one hundred two, two hundred eleven, two hundred twelve and four hundred two of the retirement and social security law.

(7) No employer shall be subject to any civil or criminal liability by reason of his disclosure to the department of any information required to be disclosed pursuant to this subdivision unless such information is knowingly and wilfully reported incorrectly.

(8) The provisions of the state freedom of information act shall not

apply to any personally identifiable information obtained by any agency or any public official pursuant to the provisions hereof.

(9) Cross-references. (a) For the applicable penalty for failure to comply with wage reporting requirements, see subsection (v) of section six hundred eighty-five of this chapter.

(b) See paragraph four of subsection (a) of section six hundred seventy-four of this chapter for requirements relating to the filing of quarterly combined withholding, wage reporting and unemployment insurance returns.

* NB There are 2 § 171-a's

§ 171-b. Verification of income. (1) The commissioner is authorized to enter into an agreement with the commissioner of the division of housing and community renewal, the supervising agency as defined in subdivision fifteen of section two of the private housing finance law, or the corporation described in section forty-five-a of such law, to verify income information forwarded to the department by the commissioner of housing and community renewal, the supervising agency, the corporation, or a company, as defined in subdivision two of section twelve of such law. The department may charge a reasonable fee, to be determined by the commissioner, in payment to the department for the expense incurred in verifying income information forwarded to such department by the commissioner of housing and community renewal, the supervising agency, the corporation, or a company. Nothing contained herein shall be construed to authorize the department to enter into any agreement with such commissioner to provide any income information whatsoever and such agreement shall be limited solely to the verification of income information.

(2) Verification of income information and information under subdivision four of this section by the department shall be limited to agreement or disagreement with the material representations contained in such information and a statement of whether each such representation has been overstated or understated.

(3) (a) The commissioner is authorized and directed to enter into an agreement with the commissioner of the division of housing and community renewal to verify the income of tenants residing in housing

accommodations subject to rent regulation. The department shall adopt rules and regulations to effect the provisions of this subdivision.

(b) The department, when requested by the division of housing and community renewal, shall verify the total annual income of all persons residing in housing accommodations as their primary residence subject to rent regulation and shall notify the commissioner of the division of housing and community renewal as may be appropriate whether the total annual income exceeds the applicable deregulation income threshold in each of the two preceding calendar years. No other information regarding the annual income of such persons shall be provided.

(4) The commissioner is authorized and directed to enter into an agreement with the commissioner of health which shall set forth the procedures by which the commissioner shall (a) facilitate the verification of income eligibility for subsidized health insurance coverage under the child health insurance plan pursuant to subparagraphs (i) and (ii) of paragraph (f) of subdivision two of section two thousand five hundred eleven of the public health law, and for the medical assistance and family health plus programs pursuant to subdivision eight of section three hundred sixty-six-a and paragraphs (b) and (d) of subdivision two of section three hundred sixty-nine-ee of the social services law, as specified by the commissioner of health and agreed to by the commissioner, and (b) shall provide the information required by subdivision two-a of section two thousand five hundred eleven of the public health law.

(5) Nothing contained in this section shall be deemed to require the violation of any confidentiality agreement entered into by the state or any entity thereof under the provisions of section sixty-one hundred three, or any other provision, of the internal revenue code, nor shall this section be administered in any manner which will result in a violation of any such confidentiality agreement.

(6) Except with respect to subdivision four of this section, the commissioner shall promulgate rules and regulations to effect the provisions of this section.

(7) The provisions of the state freedom of information act shall not apply to any verification of income information obtained from a company, the commissioner of housing and community renewal, the supervising agency, the corporation, or officer or employee thereof, an approved

organization as defined in section two thousand five hundred ten of the public health law or the commissioner of health pursuant to the provisions of this section nor shall the provisions of such act apply to any verifications prepared or provided pursuant to subdivision three and information provided pursuant to subdivision four of this section.

§ 171-c. Certain overpayments credited against past-due support. (1)

The commissioner, on behalf of the department, shall enter into a written agreement with the commissioner of the office of temporary and disability assistance, on behalf of the state office of temporary and disability assistance, which shall set forth the procedures for crediting any overpayment by an individual, estate or trust of income tax imposed by article twenty-two of this chapter, city personal income tax on residents imposed pursuant to the authority of article thirty of this chapter, city income tax surcharge on residents imposed pursuant to the authority of article thirty-A of this chapter and city earnings tax on nonresidents imposed pursuant to the authority of article thirty-B of this chapter and the interest on such overpayments against past-due support owed by such individual, estate or trust of which the commissioner has been notified by the commissioner of the office of temporary and disability assistance pursuant to the provisions of such agreement.

(2) Such agreement shall apply to past-due support which is owed to persons or entities entitled to enforce an order of support. For purposes of this section, an "order of support" means any final order, decree or judgment in a matrimonial action or family court proceeding, or any foreign support order, decree or judgment which is registered pursuant to section thirty-seven-a of the domestic relations law, which requires the payment of alimony, maintenance, support or child support. For purposes of this section, "past-due support" means the amount of a delinquency determined from an order of support no longer subject to appellate judicial review.

(3) Such agreement shall include:

(a) the procedure under which the state department of office of temporary and disability assistance shall notify the commissioner of liability for past-due support, such procedure to specify when the

commissioner shall be notified and the content of such notification;

(b) the minimum period of delinquency in payment of past-due support and the minimum amount of past-due support with respect to which the commissioner of taxation and finance shall, pursuant to this section, credit an overpayment against past-due support;

(c) the procedure for reimbursement of the commissioner by the state office of temporary and disability assistance for the full cost of carrying out the procedures authorized by this section;

(d) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section; and

(e) the procedure for reimbursement of the comptroller by the state office of temporary and disability assistance for any overpayment and interest thereon which has been credited against past due support owed by a taxpayer filing a joint return, but which has been refunded by the comptroller, pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, to a spouse not liable for the past due support owed by such taxpayer.

(4) (a) With regard to persons owed past-due support who are receiving services pursuant to title six-A of article three of the social services law, no later than thirty days prior to the date a local social services district requests the state office of temporary and disability assistance to notify the commissioner of the liability of an individual, estate or trust for past-due support, such district shall notify such individual, estate or trust in writing that such request may be made and shall also notify him or it that he or it may correct any error in such request and may avoid such notification by the office of temporary and disability assistance to the commissioner by satisfying such liability within thirty days of the date of the written notice from the local social services district to such individual, estate or trust. Such notice shall also set forth the name of an employee of the local social services district, including his address and telephone number, who may be contacted with respect to correction of any error in such request concerning such individual's, estate's or trust's liability for past-due support or with respect to payment of such liability.

(b) With regard to persons owed past-due support who are receiving services pursuant to title six-B of article three of the social services law, no later than thirty days prior to the date the state office of

temporary and disability assistance notifies the commissioner of the liability of an individual, estate or trust for past-due support, such office shall notify such individual, estate or trust in writing that such request may be made and shall also notify him or it that he or it may correct any error in such request and may avoid such notification by such office to the commissioner by satisfying such liability and submitting proof thereof satisfactory to the office within thirty days of the date of the written notice from such office to such individual, estate or trust. Such notice shall also set forth the name of an employee of such office, including his or her address and telephone number, who may be contacted with respect to correction of any error in such request concerning such individual's, estate's or trust's liability for past-due support or with respect to payment of such liability.

(5) (i) In calculating the amount of an overpayment and interest thereon which shall be credited against past-due support owed by a taxpayer, the tax commission shall first credit the overpayment and interest thereon against any:

(A) liability of such taxpayer in respect of any tax imposed by this chapter;

(B) liability of such taxpayer for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the tax commission; and

(C) estimated tax for the succeeding taxable year if the taxpayer claims such overpayment or a portion thereof as a credit against estimated tax for such succeeding taxable year pursuant to subsection (e) of section six hundred eighty-six of this chapter or subdivision (e) of section 11-1786 of the administrative code of the city of New York for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the tax commission.

(ii) Only the balance remaining, after such overpayment and the interest thereon has been credited as described in paragraph (i) of this subdivision, shall be certified as an overpayment plus any interest to be credited against past-due support, with the remainder to be refunded to the taxpayer if such remainder is not required to satisfy the amount of a default in repayment of a state university loan or city university loan pursuant to section one hundred seventy-one-e of this article and/or the amount of a past-due legally enforceable debt pursuant to

section one hundred seventy-one-f of this article and/or a city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article and/or the amount of a default in repayment of a guaranteed student loan pursuant to section one hundred seventy-one-d of this article. In cases where the taxpayer owes past-due support to more than one person or entity, and the total amount of past-due support certified to the commissioner by the state office of temporary and disability assistance exceeds the balance remaining, each such person or entity shall receive a pro rata share of the balance remaining, such share to be based on the amount of past-due support owed to such person or entity as certified to the commissioner by such office pursuant to this section. The state office of temporary and disability assistance shall be responsible for determining and distributing each person's or entity's pro rata share of past-due support pursuant to regulations of such office.

(6) The tax commission shall certify to the comptroller the total amount of the overpayment and the interest on such overpayment, the amount of such overpayment and the interest on such amount to be credited against past-due support and the balance of such overpayment and interest to be refunded to the taxpayer.

(7) The commissioner of taxation and finance shall notify the taxpayer making the overpayment, in writing, of the amount of such overpayment and the interest thereon certified to the comptroller as the amount to be credited against past-due support. Such notice shall include notification to any other person who may have filed a joint return with the taxpayer of the steps such other person may take in order to secure his or her proper share of the refund.

(8) (a) For purposes of this section, past-due support owed to persons who are receiving services pursuant to title six-A of article three of the social services law may include:

(i) amounts representing delinquencies which have accrued under a court order of support;

(ii) with respect to any court order of support issued before September first, nineteen hundred eighty-four which provided for periodic payments toward an established arrears amount, the entire amount of such arrears where the respondent is, at any time after September first, nineteen hundred eighty-four, delinquent in making such

periodic payments; and

(iii) with respect to any court order of support made on or after September first, nineteen hundred eighty-four which establishes an arrears amount, the entire amount of such arrears, unless such order includes a finding that any anticipated tax refunds have been considered by the court and taken into account in determining the amount of periodic payments to be made toward the arrears amount, or in determining the amount of the current support order, and expressly provides that such arrears are not to be so certified.

(b) For the purpose of the state child support program, any payment made by a respondent which is insufficient to fully satisfy both the current support obligation and a periodic payment toward the balance of any arrears amount established by court order shall be first applied toward the current support obligation or any delinquency thereon and then toward the periodic payment on any arrears amount established by court order unless otherwise required by federal regulation.

(9) From the time the commissioner is notified by the state office of temporary and disability assistance of an individual's, estate's or trust's liability for past-due support under the agreement provided for in this section, the commissioner and the department shall be relieved from all liability to such individual, estate or trust, their assigns, successors, heirs or representatives for the amount of an over payment and interest on such amount certified to the comptroller to be credited against past-due support and such individual, estate or trust shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner or the department to recover such overpayment or such interest certified to the comptroller to be credited against past-due support. Provided, however, nothing herein shall be construed to prohibit such individual, estate or trust from proceeding against the state office of temporary and disability assistance or the appropriate local social services district to recover that part of such overpayment or interest thereon so certified to the comptroller to be credited against past-due support which is greater than the amount of past-due support owed by such individual, estate or trust on the date of such certification.

(10) The tax commission shall promulgate such rules and regulations as it deems necessary to carry out the provisions of this section.

§ 171-d. Certain overpayments credited against defaulted governmental education loans. (1) The commissioner, on behalf of the tax commission, shall enter into a written agreement with the president of the New York state higher education services corporation, on behalf of such corporation, which shall set forth the procedures for crediting any overpayment by an individual, estate or trust of income tax imposed by article twenty-two of this chapter, city personal income tax on residents imposed pursuant to the authority of article thirty of this chapter, city income tax surcharge on residents imposed pursuant to the authority of article thirty-A of this chapter, city earnings tax on nonresidents imposed pursuant to the authority of former article two-E of the general city law and city earnings tax on nonresidents imposed pursuant to the authority of article thirty-B of this chapter and the interest on such overpayments against the amount of any default in repayment of any governmental education loan owed by such individual, estate or trust of which the commissioner has been notified by the president of the New York state higher education services corporation pursuant to the provisions of such agreement. For purposes of this section, "governmental education loan" shall mean any education loan debt, including judgments, owed to the federal or New York state government that is being collected by the New York state higher education services corporation.

(2) Such agreement shall apply only to the amount of a default in repayment of any governmental education loan debt, including judgments, being collected by the New York state higher education services corporation. Such agreement shall require the New York state higher education services corporation to satisfy the requirements of subdivision three of section one hundred seventy-one-f of this article.

(3) Such agreement shall include:

(a) the procedure under which the New York state higher education services corporation shall notify the commissioner of a default in repayment of a governmental education loan, such procedure to specify when the commissioner shall be notified and the content of such notification;

(b) the minimum amount outstanding on a default in repayment of a

governmental education loan against which the commissioner shall, pursuant to this section, credit an overpayment;

(c) the procedure for reimbursement of the commissioner by the New York state higher education services corporation for the full cost of carrying out the procedures authorized by this section;

(d) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section; and

(e) the procedure for reimbursement of the comptroller by the New York state higher education services corporation for overpayment and interest thereon which has been credited against the amount of default in repayment of a governmental education loan owed by a taxpayer filing a joint return, but which has been refunded by the comptroller, pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, to a spouse not liable for the amount of default in repayment of a governmental education loan owed by such taxpayer.

(4) (i) In calculating the amount of an overpayment and interest thereon which shall be credited against the amount of a default in repayment of a governmental education loan owed by a taxpayer, the commissioner shall first credit the overpayment and interest thereon against any:

(A) liability of such taxpayer in respect of any tax imposed by this chapter;

(B) liability of such taxpayer for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the tax commission;

(C) estimated tax for the succeeding taxable year if such taxpayer claims such overpayment or a portion thereof as a credit against estimated tax for such succeeding taxable year pursuant to subsection (e) of section six hundred eighty-six of this chapter or subdivision (e) of section 11-1786 of the administrative code of the city of New York for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the tax commission; and

(D) past-due support owed by the taxpayer pursuant to section one hundred seventy-one-c of this article.

(E) the amount of a default in repayment of a state university loan or city university loan pursuant to section one hundred seventy-one-e of this article.

(F) the amount of a past-due legally enforceable debt owed to a state agency pursuant to section one hundred seventy-one-f of this article.

(G) the amount of a city of New York tax warrant judgment debt owed to the city of New York pursuant to section one hundred seventy-one-l of this article.

(ii) Only the balance remaining, after such overpayment and the interest thereon has been credited as described in paragraph (i) of this subdivision, shall be certified as an overpayment plus any interest to be credited against the amount of a default in repayment of a governmental education loan, with the remainder to be refunded to the taxpayer.

(5) The tax commission shall certify to the comptroller the total amount of the overpayment and the interest on such overpayment, the amount of such overpayment and the interest on such amount to be credited against the amount of the default in repayment of a governmental education loan and the balance of such overpayment and interest to be refunded to the taxpayer.

(6) The commissioner shall notify the taxpayer making the overpayment, in writing, of the amount of such overpayment and the interest thereon certified to the comptroller as the amount to be credited against the amount of a default in repayment of a governmental education loan. Such notice shall include notification to any other person who may have filed a joint return with the taxpayer of the steps such other person may take in order to secure his or her proper share of the refund.

(7) From the time the state tax commission is notified by the New York state higher education services corporation of an individual's, estate's or trust's default in repayment of a governmental education loan under the agreement provided for in this section, the state tax commission and the department shall be relieved from all liability to such individual, estate or trust, their assigns, successors, heirs or representatives for the amount of an overpayment and interest on such amount certified to the comptroller to be credited against the amount of default in repayment of a governmental education loan and such individual, estate or trust shall have no right to commence a court action or proceeding or to any other legal recourse against the state tax commission or the department to recover such overpayment or such interest certified to the comptroller to be credited against the amount of default in repayment of

a governmental education loan. Provided, however, nothing herein shall be construed to prohibit such individual, estate or trust from proceeding against the New York state higher education services corporation to recover that part of such overpayment or interest thereon so certified to the comptroller to be credited against the amount of a default in repayment of a governmental education loan which is greater than the amount of such default owed by such individual, estate or trust on the date of such certification.

(8) The tax commission shall promulgate such rules and regulations as it deems necessary to carry out the provisions of this section.

§ 171-e. Certain overpayments credited against national defense/national direct, health professions or nursing student loans.

(1) As used in this section only, the term "state university loan" or "city university loan" refers to loans provided to students at state-operated units of the state university of New York or the city university of New York respectively under the national defense/national direct, health professions or nursing student loan programs.

(2) The commissioner of taxation and finance, on behalf of the tax commission, shall enter into a written agreement with the state university of New York or the city university of New York respectively which shall set forth the procedures for crediting any overpayment by an individual, estate or trust of income tax imposed by article twenty-two of this chapter, city personal income tax on residents imposed pursuant to the authority of article thirty of this chapter, city income tax surcharge on residents imposed pursuant to the authority of article thirty-A of this chapter, city earnings tax on nonresidents imposed pursuant to the authority of article two-E of the general city law and city earnings tax on nonresidents imposed pursuant to the authority of article thirty-B of this chapter and the interest on such overpayments against the amount of any default in repayment of a state university loan or city university loan owed by such individual, estate or trust of which the commissioner of taxation and finance has been notified by the state university of New York or the city university of New York respectively pursuant to the provisions of such agreement.

(3) Such agreement shall apply only to the amount of a default in

repayment of a state university loan or city university loan as to which the state and/or state university of New York or the city university of New York respectively has obtained a judgment or has made a determination that satisfies the requirements of subdivision three of section one hundred seventy-one-f of this article.

(4) Such agreement shall include:

(a) the procedure under which the state university of New York or the city university of New York respectively shall notify the commissioner of taxation and finance of a default in a repayment of a state university loan or city university loan, such procedure to specify when the commissioner of taxation and finance shall be notified and the content of such notification;

(b) the minimum amount outstanding on a default in repayment of a state university loan or city university loan against which the commissioner of taxation and finance shall, pursuant to this section, credit an overpayment;

(c) the procedure for reimbursement of the commissioner of taxation and finance by the state university of New York or the city university of New York respectively for the full cost of carrying out the procedures authorized by this section;

(d) a provision providing that information furnished to the state university of New York or the city university of New York respectively by the commissioner of taxation and finance and the comptroller pursuant to said agreement shall be considered confidential and shall not be disclosed except to such federal or state department or agency entitled to such information;

(e) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section; and

(f) the procedure for reimbursement of the comptroller by the state university of New York or city university of New York for any overpayment and interest thereon which has been credited against the amount of default on repayment of a state university loan or a city university loan owed by a taxpayer filing a joint return, but which has been refunded by the comptroller, pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, to a spouse not liable for the amount of default in repayment of a state university loan or city university loan owed by such taxpayer.

(5) (a) In calculating the amount of an overpayment and interest thereon which shall be credited against the amount of a default in repayment of a state university loan or city university loan owed by a taxpayer, the tax commission shall first credit the overpayment and interest thereon against any:

(A) liability of such taxpayer in respect of any tax imposed by this chapter;

(B) liability of such taxpayer for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the tax commission;

(C) estimated tax for the succeeding taxable year if such taxpayer claims such overpayment or a portion thereof as a credit against estimated tax for such succeeding taxable year pursuant to subsection (e) of section six hundred eighty-six of this chapter or subdivision (e) of section 11-1786 of the administrative code of the city of New York for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the tax commission; and

(D) past-due support owed by the taxpayer pursuant to section one hundred seventy-one-c of this chapter;

(b) Only the balance remaining, after such overpayment and the interest thereon has been credited as described in paragraph (a) of this subdivision, shall be certified as an overpayment plus any interest to be credited against the amount of a default in repayment of a state university loan or city university loan, with the remainder to be refunded to the taxpayer if such remainder is not required to satisfy the amount of a past-due legally enforceable debt pursuant to section one hundred seventy-one-f of this article, and/or a city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article and/or the amount of a default in repayment of a guaranteed student loan pursuant to section one hundred seventy-one-d of this article.

(6) The tax commission shall certify to the comptroller the total amount of the overpayment and the interest on such overpayment, the amount of such overpayment and the interest on such amount to be credited against the amount of the default in repayment of a state university loan or city university loan and the balance of such overpayment and interest to be refunded to the taxpayer.

(7) The commissioner of taxation and finance shall notify the taxpayer making the overpayment, in writing, of the amount of such overpayment and the interest thereon certified to the comptroller as the amount to be credited against the amount of a default in repayment of a state university loan or city university loan. Such notice shall include notification to any other person who may have filed a joint return with the taxpayer of the steps such other person may take in order to secure his or her proper share of the refund.

(8) From the time the state tax commission is notified by the state university of New York or the city university of New York respectively of an individual's, estate's or trust's default in repayment of a state university loan or city university loan under the agreement provided for in this section, the state tax commission and the department of taxation and finance shall be relieved from all liability to such individual, estate or trust, their assigns, successors, heirs or representatives for the amount of an overpayment and interest on such amount certified to the comptroller to be credited against the amount of a default in repayment of such state university loan or city university loan and such individual, estate or trust shall have no right to commence a court action or proceeding or to any other legal recourse against the state tax commission or the department of taxation and finance to recover such overpayment or such interest certified to the comptroller to be credited against the amount of default in repayment of a state university loan or city university loan. Provided, however, nothing herein shall be construed to prohibit such individual, estate or trust from proceeding against the state university of New York or the city university of New York respectively to recover that part of such overpayment or interest thereon so certified to the comptroller to be credited against the amount of a default in repayment of a state university loan or city university loan which is greater than the amount of such default owed by such individual, estate or trust on the date of such certification.

(9) The tax commission shall promulgate such rules and regulations as it deems necessary to carry out the provisions of this section.

§ 171-f. Certain overpayments credited against outstanding debts owed to a state agency. (1) For the purposes of this section, (a) "state

agency" shall mean any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other governmental entity performing a governmental or proprietary function for the state, or, solely for purposes of this section, a local social services district; (b) "taxpayer" shall mean a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual who or which is liable for any tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter or article two-E of the general city law, which tax or other imposition is administered by the commissioner of taxation and finance, or who or which is under a duty to perform an act under or pursuant to such tax or imposition, excluding a state agency, a municipal corporation or a district corporation; and (c) "overpayment" shall mean an overpayment which has been requested or determined to be refunded, a refund or a reimbursement, of a tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter or article two-E of the general city law, which is administered by the commissioner of taxation and finance.

(2) The commissioner of taxation and finance, upon agreement with the state comptroller and acting as an agent for the state comptroller, shall set forth the procedures for crediting any overpayment by a taxpayer of any tax or other imposition imposed by or authorized to be imposed pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter or article two-E of the general city law, which is administered by the commissioner of taxation and finance, and the interest on any such overpayments, against the amount of a past-due legally enforceable debt owed by such taxpayer to a state agency. An implementation plan shall be developed by the division of the budget and the department of taxation and finance which shall provide, but not be limited to, guidance with respect to coordination of debt collection pursuant to this section and subdivision twenty-seventh of section one hundred seventy-one of this article. This section shall not be deemed to abrogate or limit in any way the powers and authority of the state comptroller to set off debts owed the state against payments from the state, under the constitution of the state or any other law.

(3) For purposes of this section a past-due legally enforceable debt against which an overpayment and interest thereon may be credited shall include any applicable interest or late payment charge and is a debt:

(a) as to which the state has (i) obtained a judgment and (ii) given such notice as is required in subdivision (d) of section five thousand two hundred twenty-two of the civil practice law and rules; or

(b) as to which a state agency has (i) made a final administrative determination where the taxpayer had the opportunity for an adjudicatory proceeding to which article three of the state administrative procedure act is applicable, or the taxpayer had an opportunity for a proceeding which substantially complies with the requirements of such article three where such article three is not applicable, or the taxpayer was afforded such notice and opportunity to be heard as satisfies due process requirements applicable to such state agency and to such debt, except that if, pursuant to law or regulation, the debt is not collectible unless the state agency obtains a judgment, then the debt will not be considered a past-due legally enforceable debt for purposes of this section until such state agency has obtained a final judgment no longer subject to judicial review and (ii) which cannot be collected by administrative offset by the referring state agency against amounts payable to the taxpayer by the referring department; and

(c) with respect to which the state agency or the department of law has notified the taxpayer in writing, or has made a reasonable attempt to so notify the taxpayer at the taxpayer's last address known to such state agency (i) that the debt, which is clearly identified as to amount and nature, is past-due and unless paid within thirty days thereafter, would be referred to the department of taxation and finance to be offset against an overpayment; (ii) that state law permits the offset of certain overpayments against such debts; (iii) that the taxpayer may request a review of the proposed referral for offset by contacting the state agency at a telephone number or an address disclosed in the notice; and (iv) that the taxpayer may present, to the state agency, written evidence and arguments in support of his defense to the proposed referral or may appear at a scheduled conference with the state agency to present oral arguments and written and oral evidence in support of such defense; provided, however, that nothing herein shall be deemed to afford the taxpayer the opportunity to reargue any issue which was, or

could have been, adjudicated in the proceeding described in paragraph (a) or (b) of this subdivision; and

(d) which the state agency which is the creditor or the department of law, as the case may be, certifies to the commissioner of taxation and finance is past-due and legally enforceable.

(4) The procedures set forth by the commissioner of taxation and finance for crediting any overpayments, and the interest on any such overpayments, against a past-due legally enforceable debt pursuant to this section shall include but shall not be limited to:

(a) the procedure under which the creditor state agency shall notify the commissioner of taxation and finance of a past-due legally enforceable debt due from a taxpayer, specifying when the department will be notified, the information to be contained in such notification and the form and format to be used for such notification;

(b) the minimum amount of a past-due legally enforceable debt against which the commissioner of taxation and finance shall credit an overpayment of tax;

(c) a provision providing that information furnished to the commissioner of taxation and finance and the comptroller pursuant to such procedures shall be considered confidential and shall not be disclosed, except as otherwise allowed in this chapter;

(d) a provision providing that information furnished by the commissioner of taxation and finance pursuant to such procedures shall be considered confidential and shall not be disclosed, except the amount of the overpayment and interest thereon which has been credited may be disclosed to the taxpayer, and the amount so credited and the information necessary to properly identify the taxpayer may be disclosed to the creditor state agency; and

(e) the procedure for reimbursement of the comptroller by the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, for any overpayment and interest thereon which has been credited against the past-due legally enforceable debt owed by a taxpayer filing a joint return, but which has been refunded by the comptroller, pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, to a spouse not liable for the amount of a past-due legally enforceable debt owed by such taxpayer.

(5)(a) In calculating the amount of an overpayment and interest

thereon which shall be credited against the amount of a past-due legally enforceable debt owed by a taxpayer which is certified to the department of taxation and finance for collection pursuant to this section, the department of taxation and finance shall first credit the overpayment and interest thereon against any:

(i) liability of such taxpayer in respect of any tax or other imposition imposed by this chapter and administered by the commissioner of taxation and finance;

(ii) liability of such taxpayer for any tax or other imposition imposed pursuant to the authority of this chapter or any other law if such tax is administered by the commissioner of taxation and finance;

(iii) estimated tax for the succeeding taxable year if such taxpayer claims such overpayment or a portion thereof as a credit against estimated tax for such succeeding taxable year pursuant to subsection (e) of section six hundred eighty-six or subsection (b) of section one thousand eighty-six of this chapter or subdivision (e) of section 11-1786 of the administrative code of the city of New York or for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the commissioner of taxation and finance;

(iv) past-due support owed by the taxpayer pursuant to section one hundred seventy-one-c of this article;

(v) unreimbursed medical assistance paid on behalf of a child payable pursuant to section three hundred sixty-seven-a of the social services law;

(vi) the amount of a default in repayment of a state university or city university loan pursuant to section one hundred seventy-one-e of this article.

(b) Only the balance remaining, after the overpayment and the interest thereon has been credited as described in paragraph (a) of this subdivision, shall be certified to the comptroller as an overpayment plus any interest to be credited, in accordance with paragraph (g) of subdivision three of section one hundred seventy-one-l of this article, against a past-due legally enforceable debt that has been certified to the commissioner of taxation and finance for collection pursuant to this section, and/or a city of New York tax warrant judgment debt that has been certified to the commissioner of taxation and finance for collection pursuant to section one hundred seventy-one-l of this

article, with the remainder to be refunded to the taxpayer if such remainder is not required to satisfy the amount of a default in repayment of a guaranteed student loan pursuant to section one hundred seventy-one-d of this article. If a taxpayer owes past-due legally enforceable debt that has been certified to the commissioner of taxation and finance for collection pursuant to this section and city of New York tax warrant judgment debt that has been certified to the commissioner of taxation and finance for collection pursuant to section one hundred seventy-one-l of this article, then the overpayment and interest thereon shall be credited against the debts in the order in which the debts accrued.

(b-1) No taxpayer who has applied for, and is eligible for, an earned income tax credit under subsection (d) of section six hundred six of this chapter shall have more than ten percent of any tax overpayment credited against a past due legally enforceable debt owed to the office of temporary and disability assistance for an overpayment of public assistance unless such debt was incurred as a result of false or misleading statements or other grounds set forth in section one hundred forty-five-c of the social services law, which led to a sanction under such section.

(c) If a taxpayer owes more than one past-due legally enforceable debt which is certified to the commissioner of taxation and finance for collection pursuant to this section, the overpayment and interest thereon shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at which the debt became past-due.

(6) The commissioner shall (a) certify to the comptroller the amount of each overpayment and the interest on such amount to be credited against each past-due legally enforceable debt pursuant to this section, the total amount of each such overpayment and the interest on each such overpayment, and the balance, if any, of each such overpayment and interest thereon to be refunded to the taxpayer, and (b) shall certify to the comptroller, with regard to each such past due legally enforceable debt, the amount of liability underlying such debt which is creditable to unemployment insurance tax, federal funds, federal trust funds or fiduciary funds, or to the office of temporary and disability assistance or a local social services district relating to overpayment

of grants and allowances of public assistance or to the department of health relating to overpayments of medical assistance made to individuals who are or have been enrolled as providers in the New York state medical assistance program as established under title eleven of article five of the social services law.

(7) The commissioner of taxation and finance shall notify each taxpayer who makes an overpayment, in writing, of the amount of such overpayment and the interest thereon certified to the comptroller as an amount to be credited against a past-due legally enforceable debt which has been certified to the commissioner of taxation and finance pursuant to this section and of the name of the state agency which certified the amount to the commissioner of taxation and finance. Such notice shall include notification to any other person who may have filed a joint return with the taxpayer of the steps such other person may take in order to secure his or her proper share of the refund.

(8) From the time the commissioner of taxation and finance is notified by a creditor state agency of a past-due legally enforceable debt due from a taxpayer, the commissioner of taxation and finance shall be relieved from all liability to such taxpayer or its assigns, successors, heirs or representatives for the amount of an overpayment and interest on such amount certified to the comptroller, to be credited against the amount of a past-due legally enforceable debt to be collected pursuant to this section, and such taxpayer shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner of taxation and finance to recover such overpayment or any interest thereon certified to the comptroller to be credited against the amount of a past-due legally enforceable debt. Provided, however, nothing herein shall be construed to preclude any legal, equitable, or administrative action by such taxpayer against the certifying state agency to which the amount of overpayment and any interest thereon was credited, with reference to the amount thereof which is greater than the amount of such past-due legally enforceable debt owed by such taxpayer on the date of such certification.

§ 171-g. Provision of income information. (1) The commissioner shall enter into a written agreement with the commissioner of the office of

temporary and disability assistance, on behalf of the office of temporary and disability assistance, which shall set forth the procedures for providing information limited to that described in paragraph (b) of subdivision two of this section obtained or derived from taxpayer returns for the purpose of reviewing support orders enforced pursuant to title six-A of article three of the social services law.

(2) Such agreement shall include:

(a) the procedure under which the office of temporary and disability assistance shall notify the department of the identity of those individuals subject to a review of their court orders of support pursuant to section one hundred eleven-h of the social services law, including the requirement that such individuals be identified by name and social security number, and shall specify when the department shall be notified and the content of such notification;

(b) a description of the specific information the department shall provide to the office of temporary and disability assistance with regard to individuals identified pursuant to paragraph (a) of this subdivision, which shall be limited to federal adjusted gross income and New York adjusted gross income obtained or derived from the most recently filed New York state personal income tax return, the name, address and social security number of the taxpayer and an indication of whether such income tax return was filed jointly;

(c) a requirement that the office of temporary and disability assistance maintain a record of all requests for tax information made pursuant to this section;

(d) the procedure for reimbursement of the department by the office of temporary and disability assistance for the full costs of carrying out the procedures authorized by this section; and

(e) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section.

§ 171-h. State directory of new hires. (1) Establishment. The department shall establish an automated directory known as the "State Directory of New Hires" which shall contain information supplied by employers in accordance with subdivision three of this section,

regarding each newly hired or re-hired employee.

(2) Definitions. For the purposes of this section, the terms "employer," "employee," and "business day" shall have the following meanings:

(a) "employee" means an individual who is an employee within the meaning of chapter twenty-four of the internal revenue code of 1986, including an individual under an independent contractor arrangement with contracts in excess of twenty-five hundred dollars, and does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that a report made pursuant to this section with respect to the individual could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(b) "employer" means an individual or entity within the meaning given the term employer in section three thousand four hundred one (d) of the internal revenue code of 1986 and includes:

(i) any governmental entity, and

(ii) any labor organization as defined in section two (5) of the national labor relations act, including any entity (also known as a "hiring hall") which is used by such labor organization and an employer to carry out the requirements described in section eight (f)(3) of the national labor relations act with respect to any agreement that may exist between the labor organization and the employer.

(c) "business day" means a day on which state offices are open for regular business.

(3) Employer reporting requirements:

(a) General. Employers shall furnish to the state directory of new hires a report that contains the name, address, and social security number of each newly hired or re-hired employee who works in the state, and the employer's name, address, and identification number as assigned pursuant to section six thousand one hundred nine of the internal revenue code of 1986. Employers also shall report if dependent health insurance benefits are available and the date the employee qualifies for the benefits.

(b) Format. Each report shall be submitted on a W-4 (employee's withholding allowance certificate) form or, at employer option, an equivalent form and transmitted by first class mail, magnetically, or

electronically to the state directory of new hires. In addition, if each report is submitted on a W-4, an additional form as prescribed by the department shall be submitted to report if dependent health insurance benefits are available and the date the employee qualifies for the benefits. That additional form shall be transmitted by first class mail, magnetically, or electronically to the state directory of new hires.

(c) Timing. Employers must submit reports to the state directory of new hires within twenty calendar days of the employer's hiring or re-hiring of the employee. However, in the case of an employer transmitting reports magnetically or electronically, by two monthly transmissions (if necessary), such reports shall be transmitted not less than twelve calendar days nor more than sixteen calendar days apart.

(d) Multistate employers. An employer that has employees who work in New York and employees who work in one or more other states, and transmits reports magnetically or electronically, may designate New York or one of the other states in which such employer has employees as the state to which the employer will transmit the report to the state directory of new hires. Any employer which transmits reports by this method must notify the secretary of the federal department of health and human services in writing as to which state such employer designates for the purpose of sending reports.

(e) Federal government employers. Any department, agency, or instrumentality of the federal government shall transmit new hire reports as required by section four hundred fifty-three A (b)(1)(C) of the social security act.

(4) The department shall:

(a) notify all employers of the requirements for reporting information to the state directory of new hires as provided in subdivision three of this section;

(b) enter information into the database maintained by the state directory of new hires within five business days of receipt from an employer pursuant to subdivision three of this section;

(c) make automated comparisons of social security numbers between the state directory of new hires and the state case registry maintained by the office of temporary and disability assistance for administration of the child support enforcement program and, where there is a match, provide the office of temporary and disability assistance with the name,

address, and social security number of the employee to whom the social security number is assigned, and the name and address of the employer and the employer's identifying number assigned to the employer under section six thousand nine of the internal revenue code of 1986, within one business day after the date the information is entered into the state directory of new hires;

(d) transmit new hire information to the national directory of new hires maintained by the federal department of health and human services within three business days after the date the information is entered into the state directory of new hires;

(e) conduct matches with the office of temporary and disability assistance, the department of health, and the department of labor to verify individuals' eligibility for the various programs specified under section one thousand one hundred thirty-seven (b) of the social security act and for other public assistance programs authorized by state law, and for the purposes of administering state employment security programs, and with the workers' compensation board for the purpose of administering workers' compensation programs;

(f) on or before October first, nineteen hundred ninety-seven, enter into written agreements with the commissioners of the office of temporary and disability assistance, health, and labor on behalf of the office of temporary and disability assistance and the departments of health and labor respectively and the chair of the workers' compensation board on behalf of such board, which shall:

(i) provide for the disclosure of information obtained from the reports required to be submitted pursuant to this section to such departments and board for the purposes set forth in this section;

(ii) specify the frequency with which the department shall furnish information obtained from such reports to such office, departments, and board, which shall be within one business day after the date the information is entered into the state directory of new hires;

(iii) set forth the procedure for reimbursement of the department by such office, departments, and board subject to the approval of the director of the budget for the additional costs of carrying out the provisions of this section;

(iv) include such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section; and

(g) furnish to the national directory of new hires, on a quarterly basis, extracts of the reports required under paragraph six of subsection (a) of section three hundred three of the federal social security act to be made to the secretary of labor concerning wages and unemployment compensation paid to individuals, by such dates, and in such manner as the secretary of health and human services shall specify by regulations. The state department of labor shall, consistent with the authority contained in paragraph e of subdivision three of section five hundred thirty-seven of the labor law, disclose to the state directory of new hires, such wage and unemployment compensation information as may be necessary to allow such state directory to comply with the provisions of this paragraph.

§ 171-i. Enforcement of child support and combined child and spousal support arrears. 1. The commissioner, on behalf of the department, shall enter into a written agreement with the commissioner of the office of temporary and disability assistance, on behalf of the office of temporary and disability assistance, which shall set forth the procedures for the department to collect child support and combined child and spousal support arrears.

2. Such agreement shall include:

(a) the criteria for determining cases subject to referral to the department for enforcement which shall not include cases for which payments are being received by the support collection unit as a result of an income execution issued pursuant to section five thousand two hundred forty-one of the civil practice law and rules, and shall not include cases in which the obligor has not accumulated support arrears equivalent to or greater than four months, but shall include cases which meet any of the following criteria:

(i) cases in which the obligor has accumulated support arrears equivalent to or greater than four months; or

(ii) cases with support arrears, notwithstanding the amount of such arrears, selected by the support collection unit for referral consistent with this section, in consultation with the department and the office of temporary and disability assistance;

(b) the procedures and criteria under which the office of temporary and disability assistance and the department shall identify cases to be referred to the department for enforcement;

(c) the procedure under which the office of temporary and disability assistance shall notify and update the commissioner of an obligor's liability for support arrears;

(d) the procedures by which the department and the office of temporary and disability assistance shall coordinate their support enforcement activities;

(e) the procedures by which the department notifies the office of temporary and disability assistance of monies collected and remits such monies to the office of temporary and disability assistance or their fiscal agent for distribution to the appropriate support collection units;

(f) the procedure under which the commissioner shall be notified by the office of temporary and disability assistance that an obligor has satisfied his or her support arrears;

(g) the procedure under which the department and the office of temporary and disability assistance shall provide notification to the other or to the support collection unit of the office of temporary and disability assistance of any information with regard to an obligor's address, income, or employment, or identification of assets which may be subject to enforcement by such support collection unit or by the department;

(h) the procedure for the publicizing of sanctions for nonpayment of support, including enforcement of support arrears by the department; and

(i) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section.

3. The office of temporary and disability assistance shall send a notice by first class mail to the last known address or such other place where a support obligor is likely to receive notice, no later than thirty days prior to the date the office of temporary and disability assistance notifies the commissioner of such obligor's liability for support arrears. Such notice shall provide:

(a) that such obligor can avoid notification by the office of temporary and disability assistance to the commissioner by fully

satisfying the support arrears or by complying with such other requirements as is provided for in paragraph (d) of subdivision fifteen of section one hundred eleven-b of the social services law; and

(b) the address and telephone number of the support collection unit which such obligor may contact to request information or to arrange for payment of the support arrears.

4. Upon receipt of notification from the office of temporary and disability assistance of an obligor's eligibility for enforcement of support arrears by the department, the commissioner or his or her agent is authorized to initiate enforcement of such arrears. When such notification is made to the commissioner, the department shall be deemed to have obtained a judgment against such obligor for the full amount of the support arrears stated in such notice and any subsequent arrears which may become due. The department may enforce the judgment thereby obtained with like effect and in the same manner prescribed by this chapter for the collection of tax assessment eligible to be docketed under this chapter as a warrant, except that any payment made by the support obligor to the department to satisfy support arrears shall be paid over by the department to the office of temporary and disability assistance or its fiscal agent for distribution to the appropriate support collection unit. Where the sum collected by the department exceeds the amount of the support arrears, and the support obligor also has a liability in respect of any tax, fee or other imposition imposed by or pursuant to the authority of this chapter or any other law if such tax, fee or other imposition is administered by the commissioner, the department may credit such excess against such liability.

5. (a) For purposes of the confidentiality provisions of this chapter, enforcement activities undertaken by the department pursuant to this section shall be considered to be court actions or proceedings under this chapter.

(b) Notwithstanding anything to the contrary contained in the confidentiality provisions of this chapter, the department may furnish the office of temporary and disability assistance or the support collection unit with the information described in paragraph (g) of

subdivision two of this section regarding a support obligor whose case has been referred to the commissioner for enforcement pursuant to this section. The office of temporary and disability assistance or the support collection unit, as applicable, may redisclose such information only to the extent necessary to secure the collection of support arrears from such obligor.

6. Activities to enforce support arrears undertaken by the department pursuant to this section shall not in any way limit, restrict or impair the office of temporary and disability assistance from exercising its authority to enforce support arrears under applicable laws; provided, however, that the department and the office of temporary and disability assistance shall coordinate their support enforcement activities in a way designed to minimize duplication of effort and maximize collection of support arrears.

7. If, following referral of an obligor's case to the commissioner, such obligor commences an administrative or quasi-judicial proceeding or any civil proceeding against the department or the commissioner challenging such referral, then the office of temporary and disability assistance and the commissioner of the office of temporary and disability assistance shall be substituted as respondents or defendants in such proceeding, as the case may be. The department shall be bound by any decision in such proceeding which is no longer subject to administrative or quasi-judicial review. Neither the department nor the commissioner shall be liable for any damages sustained by reason of such referral.

8. Notwithstanding any provision of law to the contrary, a payment of support arrears made to the department pursuant to the provisions of this section shall be deemed to be a payment of such arrears to the office of temporary and disability assistance or its fiscal agent.

§ 171-j. Verification of payroll records. (1) The commissioner is authorized to enter into an agreement with the state insurance fund or other insurance carrier writing workers' compensation insurance to

verify payroll information forwarded to the department solely for the purpose of verifying, by each employer in the construction classification, the number of employees, by location, total gross wages paid to such employees per week, total hours worked by such employees per quarter and total annual gross wages subject to withholding paid to such employees, as reported pursuant to the state's combined wage reporting and withholding tax system, but shall not include the name, social security number or any other information which could be used to identify any employee. For purposes of this section the term "employer in the construction classification" shall have the meaning prescribed by subdivision two of section eighty-nine of the workers' compensation law and paragraph one of subsection (e) of section twenty-three hundred four of the insurance law. The department may charge a reasonable fee to be determined by the commissioner, in payment to the department for the expense incurred in verifying such information. Such agreement shall be limited solely to the verification of information enumerated herein.

(2) Verification of information under subdivision one of this section by the department shall be limited to agreement or disagreement with the payroll information supplied pursuant to such subdivision one and a statement of whether each representation contained therein has been overstated or understated.

(3) Nothing contained in this section shall be deemed to require the violation of any confidentiality agreement entered into by the state or any entity thereof under the provisions of section six thousand one hundred three, or any other provision, of the internal revenue code, nor shall this section be administered in any manner which will result in a violation of any such confidentiality agreement.

(4) The commissioner shall promulgate such rules and regulations as may be necessary and appropriate to effect the provisions of this section.

(5) The provisions of the state freedom of information act shall not apply to any verification prepared or provided pursuant to subdivision two of this section and information provided pursuant to subdivision one of this section.

*** § 171-k. Electronic signature.** If any return or report relating to a

tax, fee or other imposition administered by the commissioner is authorized by the commissioner to be filed electronically, then such return or report shall be signed electronically consistent with the provisions of article three of the state technology law; provided, however, that if the commissioner determines that electronic signatures that are used by the federal internal revenue service in tax administration are not consistent with the provisions of article three of the state technology law, then the commissioner, after conferring with the office of information technology services, may prescribe the manner and form of electronic signature on any such return or report. Such electronic signature shall conform, to the extent practicable, with electronic signatures that are used by the federal internal revenue service. The use of such an electronic signature shall have the same validity and effect as the use of a signature affixed by hand.

* NB Effective until July 1, 2027

* § 171-k. Electronic signature. (1) If any return or report relating to a tax, fee or other imposition administered by the commissioner is authorized by the commissioner to be filed electronically, then such return or report shall be signed electronically consistent with the provisions of article three of the state technology law; provided, however, that if the commissioner determines that electronic signatures that are used by the federal internal revenue service in tax administration are not consistent with the provisions of article three of the state technology law, then the commissioner, after conferring with the office of information technology services, may prescribe the manner and form of electronic signature on any such return or report. Such electronic signature shall conform, to the extent practicable, with electronic signatures that are used by the federal internal revenue service. The use of such an electronic signature shall have the same validity and effect as the use of a signature affixed by hand.

(2) The commissioner shall develop procedures for the use or acceptance of signatures in digital or other electronic form on any declaration, statement, or other document utilized by the department. Such electronic signature procedures shall conform, to the extent practicable, with electronic signature procedures that are used by the federal internal revenue service.

(3) Any person authorized pursuant to a valid power of attorney form

administered by the department or the New York city department of finance to act on behalf of a taxpayer, may electronically sign any declaration, statement, or other document required to be signed by such department or departments pursuant to and consistent with the electronic signature procedures set forth in this section. The use of such an electronic signature shall have the same validity and effect as the use of a signature affixed by hand.

* NB Effective July 1, 2027

§ 171-1. Certain overpayments credited against outstanding tax debt owed to the city of New York. (1) For the purposes of this section:

(a) "taxpayer" shall mean a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual who or which is liable for any tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, which tax or other imposition is administered by the commissioner of taxation and finance, or who or which is under a duty to perform an act under or pursuant to such tax or imposition, excluding a state agency, a municipal corporation or a district corporation;

(b) "overpayment" shall mean an overpayment which has been requested or determined to be refunded, a refund or a reimbursement, of a tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, which is administered by the commissioner of taxation and finance; and

(c) "city of New York tax warrant judgment debt," shall mean tax debt owed to the city of New York that is the subject of a tax warrant issued by the city of New York department of finance and docketed pursuant to the provisions of title eleven of the administrative code of the city of New York and that remains outstanding.

(2) The commissioner of taxation and finance shall enter into a written agreement with the commissioner of finance of the city of New York, which shall set forth the procedures for crediting any overpayment by a taxpayer and the interest thereon against city of New York tax warrant judgment debt owed by such taxpayer of which the commissioner of taxation and finance has been notified by the city of New York

commissioner of finance pursuant to the provisions of such agreement.

(3) Such agreement shall include:

(a) the procedure under which the city of New York commissioner of finance shall notify the commissioner of taxation and finance of liability for city of New York tax warrant judgment debt, specifying when the commissioner of taxation and finance will be notified, the information to be contained in such notification and the form and format to be used for such notification;

(b) the fee, if not waived, for reimbursement of the commissioner of taxation and finance by the city of New York department of finance for the full cost of carrying out the procedures authorized by this section;

(c) the minimum period of delinquency of the city of New York tax warrant judgment debt, and the minimum amount of the past due city of New York tax warrant judgment debt against which the commissioner of taxation and finance shall, pursuant to this section, credit an overpayment;

(d) the procedure for transferring the overpayments to the city of New York department of finance so the overpayments can be applied to credit the past due city of New York tax warrant judgment debt;

(e) the procedure for reimbursement of the comptroller by the city of New York department of finance for any overpayment and interest thereon which has been credited against city of New York tax warrant judgment debt owed by a taxpayer, but which was paid by the taxpayer prior to the overpayment being applied;

(f) the procedure for reimbursement of the comptroller by the city of New York department of finance for any overpayment and interest thereon which has been credited against city of New York tax warrant judgment debt owed by a taxpayer filing a joint return, but which has been refunded by the comptroller, pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, to a spouse not liable for the city of New York tax warrant judgment debt owed by such taxpayer;

(g) a provision to the effect that if a taxpayer owes past-due legally enforceable debt that has been certified to the commissioner of taxation and finance for collection pursuant to section one hundred seventy-one-f of this article and city of New York tax warrant judgment debt that has been certified to the commissioner of taxation and finance for

collection pursuant to this section, then the overpayment and interest thereon shall be credited against the debts in the order in which the debts accrued. The city of New York tax warrant judgment debt shall be deemed for purposes of this section to have accrued at the time of docketing of the tax warrant; and

(h) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section, including provisions relating to the notice to be given to the taxpayer.

(4)(a) In calculating the amount of an overpayment and interest thereon that shall be credited against city of New York tax warrant judgment debt owed by a taxpayer that has been certified to the commissioner of taxation and finance for collection pursuant to this section, the commissioner of taxation and finance shall first credit the overpayment and interest thereon against any:

(i) liability of such taxpayer in respect of any tax or other imposition imposed by this chapter and administered by the commissioner of taxation and finance;

(ii) liability of such taxpayer for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the commissioner of taxation and finance;

(iii) estimated tax for the succeeding taxable year if the taxpayer claims such overpayment or a portion thereof as a credit against estimated tax for such succeeding taxable year pursuant to subsection (e) of section six hundred eighty-six or subsection (b) of section one thousand eighty-six of this chapter or subdivision (e) of section 11-1786 of the administrative code of the city of New York or for any tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the commissioner of taxation and finance;

(iv) past-due support owed by the taxpayer pursuant to section one hundred seventy-one-c of this article;

(v) unreimbursed medical assistance paid on behalf of a child payable pursuant to section three hundred sixty-seven-a of the social services law; and

(vi) the amount of a default in repayment of a state university or city university loan pursuant to section one hundred seventy-one-e of this article.

(b) Only the balance remaining, after the overpayment and the interest

thereon has been credited as described in paragraph (a) of this subdivision, shall be certified to the comptroller as an overpayment plus any interest to be credited, in accordance with paragraph (g) of subdivision three of this section, against city of New York tax warrant judgment debt that has been certified to the commissioner of taxation and finance for collection pursuant to this section, and/or past-due legally enforceable debt that has been certified to the commissioner of taxation and finance for collection pursuant to section one hundred seventy-one-f of this article, with the remainder to be refunded to the taxpayer if such remainder is not required to satisfy the amount of a default in repayment of a guaranteed student loan pursuant to section one hundred seventy-one-d of this article. If a taxpayer owes city of New York tax warrant judgment debt that has been certified to the commissioner of taxation and finance for collection pursuant to this section and past-due legally enforceable debt that has been certified to the commissioner of taxation and finance for collection pursuant to section one hundred seventy-one-f of this article, then the overpayment and interest thereon shall be credited against the debts in the order in which the debts accrued.

(5) The commissioner of taxation and finance shall certify to the comptroller the amount of each overpayment and the interest thereon to be credited against city of New York tax warrant judgment debt, and the balance, if any, of each such overpayment and interest to be refunded to the taxpayer.

(6) The commissioner of taxation and finance shall notify each taxpayer who makes an overpayment, in writing, of the amount of such overpayment and the interest thereon certified to the comptroller as the amount to be credited against city of New York tax warrant judgment debt. Such notice shall include notification to any other person who may have filed a joint return with the taxpayer of the steps such other person may take in order to secure his or her proper share of the refund.

(7) From the time the commissioner of taxation and finance is notified by the city of New York department of finance of a taxpayer's liability for city of New York tax warrant judgment debt under the agreement provided for in this section, the commissioner of taxation and finance shall be relieved from all liability to such taxpayer, its assigns,

successors, heirs or representatives for the amount of an overpayment and interest thereon certified to the comptroller to be credited against city of New York tax warrant judgment debt and the taxpayer shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner of taxation and finance to recover such overpayment or interest thereon certified to the comptroller to be credited against city of New York tax warrant judgment debt. Provided, however, nothing herein shall be construed to prohibit such taxpayer from proceeding against the city of New York department of finance to recover that part of such overpayment or interest thereon so certified to the comptroller to be credited against city of New York tax warrant judgment debt that is greater than the amount of city of New York tax warrant judgment debt owed by such taxpayer on the date of such certification.

(8) The commissioner of taxation and finance and the city of New York department of finance may promulgate such rules and regulations as they deem necessary to carry out the provisions of this section.

§ 171-m. Certain New York city tax overpayments credited against outstanding debts owed to the state of New York. (1) For purposes of this section:

(a) "judgment" shall mean a warrant filed with a county clerk whereby the commissioner is, in the right of the people of the state of New York, deemed to have obtained judgment against an individual, corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity, identified in a tax warrant as the judgment debtor, for a tax or other imposition;

(b) "overpayment" shall mean overpayment of a tax administered by the commissioner of finance of the city of New York pursuant to title eleven of the administrative code of the city of New York;

(c) "taxpayer" means a judgment debtor who or which made an overpayment.

(2) Notwithstanding any law to the contrary, an overpayment may be paid by the commissioner of finance of the city of New York to the commissioner for full or partial satisfaction of a judgment against a taxpayer who or which made the overpayment. The commissioner and the

commissioner of finance of the city of New York are hereby authorized to enter into a written agreement which shall set forth procedures for applying an overpayment and interest thereon for satisfaction, in part or in full, of a judgment. The commissioner of finance and the commissioner may also obtain and exchange whatever return or report information is necessary to implement the agreement.

(3) Such agreement shall include:

(a) the procedure under which the commissioner shall certify to, and notify, the commissioner of finance about an outstanding judgment, amounts remaining due thereon and the format of certification and notification;

(b) the fee, if any, for reimbursement of the commissioner of finance by the commissioner for the cost of implementing procedures authorized by this section;

(c) the procedure for transferring overpayments to the commissioner;

(d) the procedure for reimbursing the city of New York in the event an overpayment was improperly paid to the commissioner;

(e) such other matters as the parties to the agreement shall deem necessary to carry out the provisions of this section.

(4) Before notifying the commissioner of finance of a judgment for partial or full satisfaction by application of an overpayment, the commissioner shall make a reasonable attempt to notify a taxpayer at the taxpayer's last known address (i) that the judgment, clearly identified as to amount and the tax or imposition, unless paid within thirty days, will be referred to the city of New York finance department for payment by application of an overpayment; (ii) that state law permits application of certain overpayments against judgments; (iii) that the taxpayer may request a review of the proposed referral of a judgment by contacting the department at a telephone number or address disclosed in the notice; and (iv) that the taxpayer may present to the commissioner any written evidence and arguments in support of a defense to the proposed referral or may appear at a scheduled conference with the department to present oral arguments and written and oral evidence in support of such defense. Provided however, nothing herein shall be deemed to afford a taxpayer the opportunity to reargue any issue which was or could have been adjudicated in an administrative or judicial proceeding prior to filing of a warrant serving as a judgment.

(5) An overpayment shall be paid to the commissioner pursuant to this section only to the extent the commissioner of finance determines the overpayment is not subject to offset against a debt owed the city of New York or owed its instrumentalities, or subject to any other enforceable city of New York interest or right in the overpayment.

(6) The commissioner of finance shall notify each taxpayer who made an overpayment, in writing, of the amount of such overpayment and the interest thereon paid to the commissioner. Such notice shall include notification to any other person who may have filed a joint return with the taxpayer of the steps such other person may take in order to secure their proper share of the refund.

(7) From the time the commissioner of finance is notified by the commissioner of a taxpayer's liability for a judgment under the agreement provided for in this section, the city of New York shall be relieved of all liability to such taxpayer, its assigns, successors, heirs or representatives for the amount of the overpayment and interest thereon paid to the commissioner. Such taxpayer, its assigns, successors, heirs or representatives shall have no right to commence a court action or proceeding or have any other legal recourse against the city of New York to recover such overpayment or interest thereon paid to the commissioner. However, nothing herein shall be construed to preclude any legal, equitable, or administrative action by such taxpayer its assigns, successors, heirs or representatives entitled to such overpayment against the commissioner to recover that part of the overpayment or interest thereon that is greater than the amount of the judgment owed by such taxpayer on the date such overpayment is credited against a judgment.

(8) The commissioner and the commissioner of finance may promulgate such rules and regulations deemed necessary to carry out the provisions of this section.

§ 171-n. Certain overpayments credited against outstanding tax debts owed to other states. (1) For the purposes of this section:

(a) "overpayment" means an amount requested for refund or otherwise determined to be in excess of that owed, with respect to any tax administered by the commissioner and remaining after application, as may

be determined by the commissioner, to the satisfaction of debts owed by a taxpayer to this state or the federal government;

(b) "taxpayer" means any individual, corporation, partnership, limited liability partnership or company, partner, member, manager, estate, trust, fiduciary or entity, who or which has made an overpayment of any tax administered by the commissioner;

(c) "tax debt" means any past due, legally enforceable tax obligation owed any other state administering that tax, which arises from (i) an enforceable judgment of a court of competent jurisdiction which is no longer subject to judicial review, or (ii) an enforceable determination of an administrative body which is no longer subject to administrative or judicial review, or (iii) an assessment or determination (including self-assessment or self-assessed determination) which has become final or finally and irrevocably fixed and no longer subject to administrative or judicial review; and

(d) "claimant state" means any state which requests application of an overpayment to a tax debt.

(2) The commissioner may, in his or her discretion, agree to pay the whole or part of an overpayment of tax administered by the commissioner to a claimant state owed a tax debt by a taxpayer, provided the claimant state grants substantially similar privileges to this state. An agreement with a claimant state must provide for thirty days advance written notice to, and an opportunity for, taxpayers to present written or oral evidence about application of their overpayments to tax debts. A proceeding may be commenced by a taxpayer within four months after a copy of a decision adverse to the taxpayer is mailed to the taxpayer for judicial review of the decision in the manner provided by article seventy-eight of the civil practice law and rules. Article forty of this chapter shall not apply to any hearing or proceeding on whether an overpayment may be applied to a tax debt in accordance with this section. The remedy provided by this section for review of hearings and proceedings shall be the exclusive remedy available to judicially determine whether an overpayment may be applied to a tax debt in accordance with this section. The amount of a tax debt remaining due as certified by a claimant state shall be prima facie evidence of the correct amount of a tax debt.

§ 171-p. Costs or fees imposed by the United States or other states for crediting tax overpayments against outstanding tax debts owed to the state of New York. (1) For purposes of this section:

(a) "overpayment" means the amount requested for refund or otherwise determined to be in excess of that owed with respect to any tax imposed under, or pursuant to the authority of, the internal revenue code or the laws of any state;

(b) "taxpayer" means any individual, corporation, partnership, limited liability partnership or company, partner, member, manager, estate, trust, fiduciary or entity, who or which has made an overpayment of tax as defined in paragraph (a) of this subdivision;

(c) "tax debt" means any past due, legally enforceable tax obligation administered by the commissioner.

(2) The commissioner may implement procedures under which any cost or fee imposed or charged by the United States or any state, with respect to payment or remittance of a taxpayer's overpayment to satisfy a tax debt of the taxpayer, must not be credited by the commissioner to payment or satisfaction of the tax debt, must be deemed to be part of the taxpayer's tax debt, and must be eligible for offset against the taxpayer's overpayment to the extent permitted by law. The commissioner may also implement procedures under which any cost or fee imposed or charged by the United States or any other state, with respect to any other payment or remittance of a taxpayer's overpayment or a vendor payment to satisfy a debt of the taxpayer or the person who is owed the vendor payment as authorized by section one hundred seventy-one-t of this article, must not be credited by the state of New York to payment or satisfaction of the debt, must be deemed to be part of the taxpayer's or person's debt, and must be eligible for offset against the taxpayer's overpayment or the person's vendor payment to the extent permitted by law.

§ 171-r. Brownfield credit report. (a) The commissioner, in consultation with the commissioner of environmental conservation, must publish a brownfield credit report annually by January thirty-first. The first report must be published by January thirty-first, two thousand

nine.

(b) The brownfield credit report must contain the following information about the credits claimed under sections twenty-one, twenty-two and twenty-three of this chapter during the previous calendar year:

(1) the name of each taxpayer claiming a credit; provided however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of those credits must be included in the report instead of information about the taxpayer claiming the credit;

(2) the amount of each credit earned by each taxpayer; provided however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the amount of credit earned by each entity must be included in the report instead of information about the taxpayer claiming the credit;

(3) information identifying the project for which a certificate of completion was issued and the credit claimed under section twenty-one, twenty-two or twenty-three of this chapter, including the name of the project and municipality, including the county, in which the project is located; and

(4) the number of credits by each credit type and the amount of such credits granted, claimed and earned on a brownfield site, statewide and department of environmental conservation region basis; and of those, the number of credits and the average amount of such credits allowed to taxpayers in each county, brownfield opportunity area designated pursuant to section nine hundred seventy-r of the general municipal law and in each environmental zone as defined in subdivision (b) of section twenty-one of this chapter.

(5) copies of all reports received from developers pursuant to section one hundred seventy-one-s of this article or, in the commissioner's discretion, a summary of the contents of such reports.

(c) The information included in the brownfield credit report will be based on the information filed with the department during the previous calendar year, to the extent that it is practicable to use that

information.

(d) Such report shall also contain any other information received from the commissioner of environmental conservation with regard to such credits, and any other statistical information that such commissioner deems to be useful in analyzing the effects of the program.

(e) The commissioner, in consultation with the commissioner of environmental conservation, shall publish by January thirty-first, two thousand sixteen a supplemental brownfield credit report containing the information required by this section about the credits claimed for the years two thousand five, two thousand six, and two thousand seven.

§ 171-t. Reciprocal offset agreements with the United States or other states. (1) For the purposes of this section, the definitions provided for in section one hundred seventy-one-n of this article apply together with the following:

(a) "Claimant" means any state or the United States that enters into a reciprocal agreement under this section or requests application of a vendor payment or an overpayment to a debt.

(b) "Debt" means (i), for purposes of state debt, a "tax debt" as defined in section one hundred seventy-one-n of this article and any other past due legally enforceable obligation owed to a state, which arises from (A) an enforceable judgment of a court of competent jurisdiction that is no longer subject to judicial review, or (B) an enforceable determination of an administrative body that is no longer subject to administrative or judicial review, or (C) a determination that has become final or finally and irrevocably fixed and no longer subject to administrative or judicial review; or (ii), for purposes of federal debt, debt means any amount of money, funds or property that has been determined by an appropriate official of the federal government to be owed to the United States by a person, organization, or entity, except another federal agency, to the extent such amount is eligible for offset under federal law. The term includes debt administered by a third party acting as an agent for the federal government.

(c) "Debtor" means a person who owes a debt.

(d) "Person" has the same meaning as that term has in subdivision (a) of section eleven hundred one of this chapter.

(e) "Vendor payment" means any payment, other than an overpayment, made by a state or the United States to any person, and includes but is not limited to any expense reimbursement to an employee of the state or the United States; but does not include a person's salary, wages or pension.

(2) The commissioner may, in his or her discretion, enter into a collection and offset agreement with another state or with the United States secretary of the treasury through the internal revenue service or the financial management service of the department of the treasury of the United States under which the commissioner, on behalf of the state of New York, may, in his or her discretion, agree to pay to a claimant owed a debt by a taxpayer or other person the whole or part of an overpayment or a vendor payment owed by the state to that taxpayer or other person, provided the claimant grants substantially similar privileges to this state. However, the United States will not be required under this section to offset tax overpayments owed by it except to the extent that it agrees to do so. An agreement with the claimant must specify that a taxpayer or any person owed a vendor payment will receive thirty days advance written notice of the offset and will be provided with an opportunity to present written or oral evidence about the application of the overpayment or vendor payment to the debt. A proceeding for judicial review of the decision in the manner provided by article seventy-eight of the civil practice law and rules may be commenced by a taxpayer or a person owed a vendor payment within four months after a copy of a decision adverse to the taxpayer or that person is mailed to the taxpayer or that person. Article forty of this chapter does not apply to any hearing or proceeding on whether an overpayment or vendor payment may be applied to a debt under this section. The remedy provided by this section for review of hearings and proceedings is the exclusive remedy available to judicially determine whether an overpayment or vendor payment may be applied to a debt under this section. The amount of a debt remaining due as certified by a claimant will be prima facie evidence of the correct amount of a debt.

(3) The commissioner will calculate the amount of an overpayment and interest thereon that is to be credited against the amount of a past due legally enforceable debt owed by a taxpayer which is certified to the department for collection under this section using the rules in

subdivision five of section one hundred seventy-one-f of this article. If a taxpayer or a person owes more than one debt which is certified to the commissioner for collection under this section, any overpayment or vendor payment will be credited against the debts in the order in which the debts accrued. A debt will be considered to have accrued at the time at which the debt became past due.

(4) Notwithstanding any other law, the commissioner is authorized to release to a claimant taxpayer information for purposes of implementing and administering an agreement entered into between the claimant and this state under this section.

§ 171-u. Verification of eligibility for STAR exemption. (1) The commissioner shall verify the eligibility of properties for STAR exemptions in the manner provided by section four hundred twenty-five of the real property tax law.

(2)(a) Notwithstanding any provision of law to the contrary, the commissioner may adopt rules prescribing a uniform statewide system of parcel identification numbers applicable to all "assessing units", as that term is defined by section one hundred two of the real property tax law, provided that no such rule shall apply to an assessment roll with a taxable status date occurring prior to January first, two thousand thirteen.

(b) Notwithstanding the foregoing provisions of this subdivision, the commissioner may, at his or her discretion, adopt rules that are applicable only to "special assessing units," as that term is defined by section eighteen hundred one of the real property tax law, which prescribe an alternative system of parcel identification numbers solely for such special assessing units.

(2)(a) Notwithstanding any provision of law to the contrary, the commissioner may adopt rules prescribing a uniform statewide system of parcel identification numbers applicable to all "assessing units", as that term is defined by section one hundred two of the real property tax law, provided that no such rule shall apply to an assessment roll with a taxable status date occurring prior to January first, two thousand thirteen.

(b) Notwithstanding the foregoing provisions of this subdivision, the

commissioner may, at his or her discretion, adopt rules that are applicable only to "special assessing units," as that term is defined by section eighteen hundred one of the real property tax law, which prescribe an alternative system of parcel identification numbers solely for such special assessing units.

§ 171-v. Enforcement of delinquent tax liabilities through the suspension of drivers' licenses. (1) The commissioner shall enter into a written agreement with the commissioner of motor vehicles, which shall set forth the procedures for the two departments to cooperate in a program to improve tax collection through the suspension of drivers' licenses of taxpayers with past-due tax liabilities equal to or in excess of ten thousand dollars. For the purposes of this section, the term "tax liabilities" shall mean any tax, surcharge, or fee administered by the commissioner, or any penalty or interest due on these amounts owed by an individual with a New York driver's license, the term "driver's license" means any license issued by the department of motor vehicles, except for a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law, and the term "past-due tax liabilities" means any tax liability or liabilities which have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review.

(2) The agreement shall include the following provisions:

(a) the procedures by which the department shall notify the commissioner of motor vehicles of taxpayers with past-due tax liabilities, including the procedures by which the department and the department of motor vehicles shall share the information necessary to identify individuals with past-due tax liabilities, which shall include a taxpayer's name, social security number, and any other information necessary to ensure the proper identification of the taxpayer;

(b) the procedures by which the commissioner shall notify the department of motor vehicles that a taxpayer has satisfied his or her past-due tax liabilities, or has entered into an installment payment agreement or has otherwise made payment arrangements satisfactory to the commissioner, so that the suspension of the taxpayer's driver's license may be lifted; and

(c) any other matter the department and the department of motor vehicles shall deem necessary to carry out the provisions of this section.

(3) The department shall provide notice to the taxpayer of his or her inclusion in the license suspension program no later than sixty days prior to the date the department intends to inform the commissioner of motor vehicles of the taxpayer's inclusion. However, no such notice shall be issued to a taxpayer whose wages are being garnished by the department for the payment of past-due tax liabilities or past-due child support or combined child and spousal support arrears. Notice shall be provided by first class mail to the taxpayer's last known address as such address appears in the electronic systems or records of the department. Such notice shall include:

(a) a clear statement of the past-due tax liabilities along with a statement that the department shall provide to the department of motor vehicles the taxpayer's name, social security number and any other identifying information necessary for the purpose of suspending his or her driver's license pursuant to this section and subdivision four-f of section five hundred ten of the vehicle and traffic law sixty days after the mailing or sending of such notice to the taxpayer;

(b) a statement that the taxpayer may avoid suspension of his or her license by fully satisfying the past-due tax liabilities, by making payment arrangements satisfactory to the commissioner, or by demonstrating any of the grounds for challenge set forth in subdivision five of this section. Such statement shall include information regarding programs through which the taxpayer can pay the past-due tax liabilities to the department, enter into a payment arrangement or request additional information;

(c) a statement that the taxpayer's right to protest the notice is limited to raising issues set forth in subdivision five of this section;

(d) a statement that the suspension of the taxpayer's driver's license shall continue until the past-due tax liabilities are fully paid or the taxpayer makes payment arrangements satisfactory to the commissioner; and

(e) any other information that the commissioner deems necessary.

(4) After the expiration of the sixty day period, if the taxpayer has not challenged the notice pursuant to subdivision five of this section

and the taxpayer has failed to satisfy the past-due tax liabilities or make payment arrangements satisfactory to the commissioner, the department shall notify the department of motor vehicles, in the manner agreed upon by the two agencies, that the taxpayer's driver's license shall be suspended pursuant to subdivision four-f of section five hundred ten of the vehicle and traffic law; provided, however, in any case where a taxpayer fails to comply with the terms of a current payment arrangement more than once within a twelve month period, the commissioner shall immediately notify the department of motor vehicles that the taxpayer's driver's license shall be suspended.

(5) Notwithstanding any other provision of law, and except as specifically provided herein, the taxpayer shall have no right to commence a court action or proceeding or to any other legal recourse against the department or the department of motor vehicles regarding a notice issued by the department pursuant to this section and the referral by the department of any taxpayer with past-due tax liabilities to the department of motor vehicles pursuant to this section for the purpose of suspending the taxpayer's driver's license. A taxpayer may only challenge such suspension or referral on the grounds that (i) the individual to whom the notice was provided is not the taxpayer at issue; (ii) the past-due tax liabilities were satisfied; (iii) the taxpayer's wages are being garnished by the department for the payment of the past-due tax liabilities at issue or for past-due child support or combined child and spousal support arrears; (iv) the taxpayer's wages are being garnished for the payment of past-due child support or combined child and spousal support arrears pursuant to an income execution issued pursuant to section five thousand two hundred forty-one of the civil practice law and rules; (v) the taxpayer's driver's license is a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law; (vi) the department incorrectly found that the taxpayer has failed to comply with the terms of a payment arrangement made with the commissioner more than once within a twelve month period for the purposes of subdivision three of this section; (vii) the taxpayer receives public assistance or supplemental security income; or (viii) the taxpayer demonstrates that suspension of the taxpayer's driver's license will cause the taxpayer undue economic hardship.

However, nothing in this subdivision is intended to limit a taxpayer from seeking relief pursuant to an offer in compromise pursuant to subdivision fifteenth of section one hundred seventy-one of this article or from joint and several liability pursuant to section six hundred fifty-four of this chapter, to the extent that he or she is eligible pursuant to such section, or establishing to the department that the enforcement of the underlying tax liabilities has been stayed by the filing of a petition pursuant to the Bankruptcy Code of 1978 (Title Eleven of the United States Code).

(6) Notwithstanding any provision of this chapter to the contrary, the department may disclose to the department of motor vehicles the information described in this section that, in the discretion of the commissioner, is necessary for the proper identification of a taxpayer referred to the department of motor vehicles for the purpose of suspending the taxpayer's driver's license pursuant to this section and subdivision four-f of section five hundred ten of the vehicle and traffic law. The department of motor vehicles may not redisclose this information to any other entity or person, other than for the purpose of informing the taxpayer that his or her driver's license has been suspended.

(7) Except as otherwise provided in this section, the activities to collect past-due tax liabilities undertaken by the department pursuant to this section shall not in any way limit, restrict or impair the department from exercising any other authority to collect or enforce tax liabilities under any other applicable provision of law.

§ 171-w. State support for the local enforcement of past-due property taxes. 1. Legislative findings. The legislature finds that local governments have limited means to enforce the collection of past-due property taxes. The legislature further finds that it is appropriate for the state to support the local enforcement of past-due property taxes by authorizing the commissioner to administer a program to disallow STAR credits and exemptions to delinquent property owners based on information reported to him or her by municipal officials.

2. Definitions. For the purposes of this section:

(a) "Delinquent property owner" means a STAR recipient whose primary residence is subject to past-due property taxes.

(b) "Past-due property taxes" means property taxes that have been levied upon a property owner's primary residence that remain unpaid one year after the last date on which they could have been paid without interest, or where such taxes are payable in installments, those taxes that remain unpaid one year after the last date on which the final installment could have been paid without interest.

(c) "STAR credit" means the basic STAR personal income tax credit authorized by subsection (eee) of section six hundred six of this chapter.

(d) "STAR exemption" means the basic STAR exemption from real property taxation authorized by section four hundred twenty-five of the real property tax law.

(e) "STAR recipient" means a property owner who is registered to receive the STAR credit in relation to his or her primary residence, or whose primary residence is receiving the STAR exemption.

3. STAR tax payment requirement; generally. Notwithstanding any provision of law to the contrary, a property owner whose primary residence is subject to past-due property taxes shall not be allowed to receive a STAR credit or STAR exemption unless the past-due property taxes are paid in full on or before a date specified by the commissioner.

4. Commissioner's authority. The commissioner is hereby authorized to develop a program to support the local enforcement of past-due property taxes by disallowing STAR credits and STAR exemptions to delinquent property owners. The commissioner shall establish procedures for the administration of this program, which shall include the following provisions:

(a) The procedures by which municipal officials shall report past-due property taxes and property tax payments to the department.

(b) The procedures by which the department shall notify delinquent property owners of the impending disallowance of their STAR credits or exemptions due to past-due property taxes.

(c) The date by which delinquent property owners must pay their past-due property taxes in full in order to avoid disallowance of their STAR credits or exemptions.

(d) The procedures by which the commissioner shall disallow STAR credits and notify assessors of the disallowance of STAR exemptions if past-due property taxes are not paid in full by the specified date.

(e) Such other procedures as the commissioner shall deem necessary to carry out the provisions of this section.

5. Municipal reports. The commissioner's procedures regarding municipal reporting shall be subject to the following provisions:

(a) The commissioner may request and shall be entitled to receive from any municipal corporation of the state, or any agency or official thereof, such data as the commissioner deems necessary to effectuate the purposes of this section. Such information shall be submitted to the department at such time and in such manner as the commissioner may direct.

(b) In lieu of requiring municipal officials to submit their reports directly to the department, the commissioner may, in his or her discretion, require that such reports be submitted to the county director of real property tax services, who shall integrate the reports into a single file and submit it to the department at such time and in such manner as the commissioner may direct. Provided, that where the commissioner institutes such a procedure, he or she may exclude cities with one hundred twenty-five thousand inhabitants or more, so that information about past-due property taxes and property tax payments in such a city shall be reported directly to the department by a designated city official at such time and in such manner as the commissioner may direct.

(c) Reports and other records prepared pursuant to this section shall not be subject to the provisions of article six of the public officers law.

6. Notification of delinquent property owners. The commissioner's procedures regarding the notification of delinquent property owners shall be subject to the following provisions:

(a) The department shall notify a delinquent property owner by regular

mail at least thirty days prior to the date by which his or her past-due property taxes must be paid in full in order to avoid disallowance of his or her STAR credit or exemption.

(b) Such notice shall include a statement that the property owner's STAR credit or exemption will be disallowed unless his or her past-due property taxes are paid in full by the date specified in the notice.

(c) To the extent practicable, such notice shall provide contact information for the local official or officials to whom the past-due property taxes may be paid.

(d) Such notice shall further state that the property owner's right to protest the disallowance of the STAR credit or exemption is limited to raising issues that constitute a "mistake of fact" as defined in subdivision nine of this section.

(e) Such notice may include such other information as the commissioner may deem necessary.

7. Timely payment of past-due property taxes. If a delinquent property owner pays his or her past-due property taxes in full on or before the date specified in such notice, the official receiving such payment shall so notify the department at such time and in such manner as prescribed by the commissioner. The property owner shall then be permitted to receive the STAR credit or exemption that would have been disallowed if timely payment had not been made. However, if the department does not learn of the payment until after it has already directed an assessor to deny a STAR exemption to a delinquent property owner, then in lieu of directing the exemption to be restored, the department may remit to the property owner payment in an amount that will reimburse the property owner for the increase in his or her school tax bill that is directly attributable to the lost STAR exemption.

8. Failure to make timely payment. (a) If the past-due taxes are not paid on or before the date specified in the notice that had been sent to the delinquent property owner, his or her STAR credit or STAR exemption shall be disallowed in accordance with the procedures established by the commissioner.

(b) The property owner shall not be eligible to participate in the STAR program again as long as the property is subject to past-due

property taxes.

(c) Upon payment of the past-due property taxes in full, the official receiving such payment shall notify the department at such time and in such manner as may be prescribed by the commissioner. The commissioner shall then proceed as follows:

(i) If the property owner had previously been receiving the STAR credit, the commissioner shall allow the property owner to resume his or her participation in the STAR credit program on a prospective basis, if otherwise eligible, effective with the first taxable year commencing after such payment.

(ii) If the property owner had previously been receiving the STAR exemption, the commissioner shall allow the property owner to participate in the STAR credit program on a prospective basis, if otherwise eligible, effective with the first taxable year commencing after such payment. The property owner shall not be allowed back into the STAR exemption program.

(iii) The commissioner shall, when making the first advanced payment of a STAR credit to the property taxpayer after payment of the past-due property taxes in full, also pay to such property taxpayer the value of the STAR exemptions or STAR credits that were disallowed pursuant to paragraph a of this subdivision.

9. Mistake of fact. Notwithstanding any other provision of law, a disallowance of a STAR credit or STAR exemption pursuant to this section may only be challenged before the department on the grounds of a mistake of fact as defined in this subdivision. The taxpayer will have no right to commence a court action, administrative proceeding or any other form of legal recourse against an assessor, county director of real property tax services or other local official regarding such disallowance. For the purposes of this subdivision, "mistake of fact" is limited to claims that: (i) the individual notified is not the taxpayer at issue; or (ii) the past-due property taxes were satisfied before the date specified in the notice described in subdivision six of this section. However, nothing in this subdivision is intended to limit a taxpayer from seeking relief from joint and several liability pursuant to section six hundred fifty-four of this chapter to the extent that he or she is eligible pursuant to that subdivision or establishing to the department that the

enforcement of the underlying property taxes has been stayed by the filing of a petition pursuant to the Bankruptcy Code of 1978 (Title Eleven of the United States Code).

10. Assessors. (a) Notwithstanding any provision of law to the contrary, the department may disclose to assessors such information as the commissioner deems necessary to ensure that the STAR exemptions of delinquent property owners are disallowed as required by this section.

(b) Notwithstanding any provision of law to the contrary, an assessor shall be authorized and directed to deny a STAR exemption to a delinquent property owner upon being directed by the department to do so. If an assessor should receive such a directive after the applicable assessment roll has been filed, the assessor or other official having custody and control of that roll shall be authorized and directed to remove such exemption from such roll prior to the levy of school taxes, without regard to the provisions of title three of article five of the real property tax law or any comparable laws governing the correction of administrative errors on assessment rolls and tax rolls.

11. Recovery of STAR benefits in certain cases. The commissioner may establish procedures to be followed in cases where a STAR credit or exemption was inadvertently or erroneously provided to a delinquent property owner who was sent the notice required by subdivision six of this section, and whose past-due property taxes were not paid in full by the date specified in the notice. Such procedures shall include, but not be limited to, (a) applying the improperly received STAR credit or exemption as an offset against future STAR credits or against other personal income tax credits or personal income tax refunds to which the delinquent property owner would otherwise be entitled, and (b) pursuing any of the other remedies that are available to enforce a personal income tax debt under article twenty-two of this chapter.

(12) Notwithstanding any provision of this section to the contrary, the commissioner shall extend the date by which any delinquent property owner shall be required to pay his or her past-due property taxes in full in order to receive STAR credits or STAR exemptions, until after the end of the COVID-19 state disaster emergency declared by executive order number two hundred two and any further amendments or modifications

thereto, and as may be further extended pursuant to section twenty-eight of the executive law. The department shall notify all delinquent property owners of such extension.

§ 171-z. Information sharing with the comptroller regarding unclaimed funds. 1. Notwithstanding any other law, the commissioner is authorized to release to the comptroller information regarding fixed and final unwarranted debts of taxpayers for purposes of collecting unclaimed funds from the comptroller to satisfy fixed and final unwarranted debts owed by taxpayers. For purposes of this section, the term "unwarranted debt" shall mean past-due tax liabilities, including unpaid tax, interest and penalty, that the commissioner is required by law to collect and that have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review and a warrant has not been filed; and the term "taxpayer" shall mean any individual, corporation, partnership, limited liability partnership or company, partner, member, manager, sole proprietorship, estate, trust, fiduciary or entity, who or which has been identified as owing taxes to the state. This section shall not be deemed to abrogate or limit in any way the powers and authority of the comptroller to set off debts owed the state from unclaimed funds, under the constitution of the state or any other law.

2. The comptroller shall keep all information he or she obtains from the commissioner confidential, and any employee, agent or representative of the comptroller is prohibited from disclosing any taxpayer information received under this section to anyone other than the commissioner or staff of the department or staff of the department of audit and control for the purposes described in this section.

§ 171-aa. E-file authorizations collected by tax return preparers. (a) For purposes of this section, the following terms have the following meanings:

(1) "E-file authorization" is a record collected by a tax return preparer.

(2) "Electronic signature" has the definition set forth in the electronic signatures and records act of the state technology law.

(3) "Electronic means" is use of computer technology.

(4) "Tax" means any tax or other matter administered by the commissioner pursuant to this chapter or any other provision of law.

(5) "Tax document" means a return, report or any other document relating to a tax or other matter administered by the commissioner.

(6) "Tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation, any tax document. For purposes of this section, the term "tax return preparer" also includes a payroll service.

(b) If a tax document is authorized by the commissioner to be filed electronically, then any associated e-file authorization prescribed by the commissioner may be signed using an electronic signature compliant with any instructions prescribed by the commissioner.

(c) An e-file authorization signed electronically in the manner set forth in subsection (b) of this section shall have the same force and effect as a handwritten signature and may be provided to a tax preparer by electronic means.

§ 172. Official seal. The commissioner of taxation and finance shall have and use an official seal; and the records, its proceedings and copies of all papers and documents in his possession and custody may be authenticated in the usual form, under such seal and the signature of the commissioner, deputy commissioner or the secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven.

§ 173. Review by commissioner. The commissioner shall act as an individual in exercising the powers and performing the duties conferred or imposed by section two hundred sixty of this chapter on the commissioner in relation to the apportionment of mortgage taxes unless a hearing is demanded.

§ 173-a. Hearing rights upon notice and demand. 1. Applicability and construction. (a) Applicability. Except as otherwise provided in this section, this section shall apply with respect to any tax which is administered by the commissioner and which is imposed by or authorized to be imposed pursuant to this chapter or any other law. Unless a different meaning is clearly required, any reference to "tax" or "taxes" in this section shall be deemed also to refer to special assessments, fees, interest, additions to tax, penalties or other impositions which are administered by the commissioner.

(b) Exceptions to applicability. This section shall not apply to any tax which is administered by the commissioner and which is imposed by or authorized to be imposed pursuant to:

(i) Article ten of this chapter (taxable transfers - residents).

(ii) Article eleven of this chapter (tax on mortgages).

(iii) Article twelve of this chapter (tax on transfers of stock and other corporate certificates).

(c) Construction. The provisions of this section shall supplement or be in addition to the procedures relating to collection or administration provided with respect to any tax covered by this section. Where a provision of this section is inconsistent with any such provision with respect to such tax, the provisions of this section shall apply.

2. Corporate and personal income taxes. With respect to any tax which incorporates or otherwise utilizes the procedures set forth in part VI of article twenty-two or article twenty-seven of this chapter, provisions of law which authorize the issuance of a notice and demand for an amount without the issuance of a notice of deficiency for such amount, including any interest, additions to tax or penalties related thereto, in cases of mathematical or clerical errors or failure to pay tax shown on a return, or authorize the issuance of a notice of additional tax due, including any interest, additions to tax or penalties related thereto, shall be construed as specifically denying and modifying the right to a hearing with respect to any such notice and demand or notice of additional tax due for purposes of subdivision four of section two thousand six of this chapter. Any such notice and demand or notice of additional tax due shall not be construed as a notice which

gives a person the right to a hearing under article forty of this chapter.

3. Sales and compensating use and miscellaneous taxes. With respect to any tax to which this section applies and which is not covered by subdivision two of this section:

(a) Final determination. The amount of tax which a return or report shows to be due, the amount of tax which a return or report would have shown to be due but for a mathematical or clerical error (including, with respect to a tax payable by the purchase of stamps, the amount of stamps purchased) or the amount of penalty and any interest due for failing to file a return or report or to pay or pay over any tax (or to pay for any stamps purchased) to the commissioner within the time required by or pursuant to any such tax (but not including any such penalty or interest attributable to any amount of tax with respect to which a notice of determination is required to be issued) shall be deemed to be finally determined to be due not later than on the date of the filing of such return or report (including any amended return or report showing an increase of tax or in the case of the purchase of stamps, such date of purchase). Such amount of tax, penalty or interest shall be paid upon notice and demand and shall be assessed, collected and paid in the manner provided for in each of the several taxes covered under this subdivision and such notice and demand shall not be considered as a notice of determination for purposes of the taxes covered under this subdivision. If a notice of determination has been mailed with respect to a tax covered under this subdivision, the amount of the determination shall be deemed to be finally and irrevocably fixed on the date specified in any such tax if no petition to the division of tax appeals is filed, or, if a petition is filed, then upon the date when a determination or decision rendered in the division of tax appeals establishing the amount of the notice of determination becomes final pursuant to article forty of this chapter.

(b) Notice and demand. (1) The commissioner shall, as soon as practicable, give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been finally determined to be due or which has been finally and irrevocably fixed, as the case may be, but remains unpaid, stating the amount and demanding payment

thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the commissioner determines that collection would be jeopardized by delay and the applicable tax contains provisions authorizing a jeopardy procedure, if any tax is finally determined to be due or is finally and irrevocably fixed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date. If the commissioner finds that the determination, assessment or collection of tax, addition to tax, penalty or interest is in jeopardy and the applicable tax contains provisions authorizing procedures regarding early determination, the commissioner may immediately determine the amount of such tax, addition to tax, penalty or interest (whether before or after the due date of any return or report required to show such tax, addition to tax, penalty or interest) and assess the same and give notice and demand for the payment thereof.

(2) If notice and demand is made for payment of any amount under subparagraph one of this paragraph, and if such amount is paid within twenty-one calendar days (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars) after the date of such notice and demand, interest under the applicable tax on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(c) Hearing rights upon notice and demand. Provisions of law which authorize the issuance of a notice and demand for an amount without the issuance of a notice of determination for such amount, including any interest or penalties related thereto, shall be construed as specifically denying and modifying the right to a hearing with respect to any such notice and demand for purposes of subdivision four of section two thousand six of this chapter in cases of mathematical or clerical errors or failure to pay the tax due shown on the return or for any stamps purchased, and any interest or penalties related thereto. Any such notice and demand shall not be construed as a notice which gives a person the right to a hearing under article forty of this chapter.

§ 174. Oaths, acknowledgments, subpoenas and commissions to take

testimony. 1. The commissioner, his deputies, secretary and any other officer or employee of the department of taxation and finance duly designated and authorized by resolution of the commissioner, duly entered upon the minutes, shall have power: (i) to administer oaths, take affidavits and certify acknowledgments in relation to any matter or proceeding in the exercise of the powers or duties of the commissioner under this chapter and in relation to any written instrument required or permitted to be filed with the commissioner and (ii) to subpoena and require the attendance of witnesses and the production of books, accounts, records, memoranda, documents or other papers pertinent to the investigations and inquiries which he is authorized to conduct, and to examine them in relation to any matter which he has power to investigate and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or excused from attendance. A subpoena issued under this section shall be regulated by the civil practice law and rules.

2. Any person who shall testify falsely in any material matter pending before the commissioner shall be guilty of and punishable for perjury.

3. Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

§ 174-a. Duration of warrant liens on real property. 1. General rule. Notwithstanding any provision of law to the contrary, the provisions of the civil practice law and rules relating to the duration of a lien of a docketed judgment in and upon real property of a judgment debtor, and the extension of any such lien, shall apply to any warrant or other warrant-related document electronically filed on behalf of the commissioner against a taxpayer with the department of state, whether such warrant is being enforced by a sheriff or an officer or employee of the department.

2. Applicability and definitions. This section shall apply with respect to any tax which is administered by the commissioner and which is imposed by or authorized to be imposed pursuant to this chapter,

article two-E of the general city law, section 27-0923 of the environmental conservation law or the racing, pari-mutuel wagering and breeding law. Any reference to "tax" in this section shall be deemed also to refer to special assessments, fees, interest, additions to tax, penalties and other impositions which are administered by the commissioner.

3. The term "taxpayer" shall have the same meaning given such term in subdivision b of section three thousand two of this chapter.

§ 174-b. Limitation on the time to collect tax liabilities. 1.

Notwithstanding any provision of law to the contrary and except as otherwise provided in this section, a tax liability shall not be enforceable and every tax liability shall be extinguished after twenty years from the first date a warrant could be filed by the commissioner, without regard to whether the warrant is filed. The first date a warrant could be filed means the day after the last day specified for payment by the notice and demand issued for the tax liability where there is no right to a hearing with respect to such notice and demand. The first day a warrant could be filed shall be determined without regard to subsection (c) of section six hundred ninety or subsection (c) of section one thousand ninety of this chapter, unless the commissioner assesses the liability under either such subsection (c). When there is a right to a hearing with respect to a notice and demand for a tax liability, the first date a warrant could be filed means the day that opportunity for a hearing or review has been exhausted.

2. This section shall apply to any tax that is administered by the commissioner. Any reference to "tax" in this section shall be deemed also to refer to special assessments, fees, interest, additions to tax, penalties and other impositions that are administered by the commissioner.

3. When, before the expiration of the time prescribed in this section to enforce the collection of tax, both the commissioner and the taxpayer have consented in writing to its collection after such time, the tax

liability shall not be extinguished and the tax may be collected at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by any subsequent agreement in writing made before the expiration of the period previously agreed upon.

4. The provisions of this section shall supplement or be in addition to the procedures relating to collection or administration provided with respect to any tax covered by this section. Where a provision of this section is inconsistent with any such provision with respect to such tax, the provisions of this section shall apply. For purposes of subsection (c) of section six hundred ninety-two and subsection (c) of section one thousand ninety-two of this chapter, if the commissioner does not file a warrant within six years of assessment, the time limitations in this section shall not apply and the tax liability is extinguished. Nothing in this section shall be construed to prevent the commissioner from accepting any payment for a tax liability made voluntarily by a taxpayer after the time to collect such liability has expired and the liability is extinguished. When a warrant is filed, the commissioner may include a date on that warrant indicating when such warrant expires and tax liability is extinguished.

5. If a tax liability could have been first warranted before the effective date of this section, such liability shall not be enforceable and shall be extinguished after twenty years from the first date the warrant could have been filed by the commissioner.

§ 175. Manner of execution of instruments by the commissioner.

Notwithstanding any other provision of law, whenever a statute authorizes or requires the commissioner to execute an instrument, such instrument shall be executed by having the name or title of the commissioner appear on such instrument and, underneath such name or title, such instrument shall be signed by the commissioner or by a deputy tax commissioner or by the secretary to such commissioner. An electronic signature may be used in lieu of a signature affixed by hand pursuant to article three of the state technology law. The seal of such commissioner may be affixed or appear on such instrument as a facsimile

which is engraved, printed or reproduced in any other manner. No acknowledgment of the execution of any such instrument shall be necessary for the purpose of the recordation thereof or for any other purpose.

§ 176. Transfer of the powers and duties of the comptroller in relation to the assessment or collection of certain taxes. On and after July first, nineteen hundred twenty-one, all the powers and duties now conferred or imposed upon the state comptroller in relation to the taxation of corporations under articles nine and nine-A of this chapter, in relation to the taxation of transfers of property, under article ten of this chapter, in relation to the taxation of transfers of stock, under article twelve of this chapter, and in relation to taxation upon and with respect to personal income, under article sixteen of this chapter (as such article was in effect on December thirtieth, nineteen hundred sixty), shall be transferred to and thereafter shall be exercised and performed by the commissioner, except as powers and duties under any such article are expressly conferred upon or continued in the state comptroller by acts of the legislature of nineteen hundred twenty-one, enacted subsequent to chapter ninety of the laws of nineteen hundred twenty-one.

§ 177. Construction. Wherever the terms "board of tax commissioners," "state board of tax commissioners," "state tax commissioners" or "state tax commission," "state comptroller" or "comptroller" occur in any law, or wherever in any law reference is made to such board or commissioners or commission or officer, such term or reference shall be deemed to refer to the state tax department as established by this article, to the commissioner of taxation and finance as established by this article or to the tax appeals tribunal as established by article forty of this chapter, so far as such law pertains to matters which are within the jurisdiction of such tax department, such commissioner or such tax appeals tribunal.

§ 179. Definitions. 1. For purposes of this article, Internet access service shall not constitute a telecommunication service, nor shall the provision of Internet access service constitute the carrying on of a telephone, local telephone, telegraph, or transmission business.

2. The term "Internet access service" shall have the meaning ascribed thereto in subdivision (v) of section eleven hundred fifteen of this chapter.

§ 180. Independent analysis. 1. The department shall contract with an economic impact firm for the provision of an independent, comprehensive, analysis of each tax credit, tax deduction, and tax incentive established in this chapter or any other chapter of the law which relates to increasing economic development including, but not necessarily limited to, increasing employment, developing the state's workforce, and increasing business activity. Such analysis shall include the relevant programs run at the state agency level, including relevant programs administered by executive agencies, authorities, commissions, and other government run entities, and shall not include an analysis of individual private entities or individual taxpayers. Such analysis shall include, but need not be limited to, a complete and thorough evaluation of the return on investment for each tax credit, tax deduction, and tax incentive, the economic impact of each relevant program, including direct and indirect benefits, including the creation of temporary project hires, the fiscal impact of each relevant program, including revenues received and forgone by municipalities and New York state, as applicable. For the purposes of this section, "return on investment" shall mean: (a) total job creation, including temporary project hires resulting from each project supported by each relevant program, and retained jobs; (b) whether the expenditures by the state on each tax credit, tax deduction or tax incentive result in an increase or decrease in tax revenues for New York state municipalities, and New York state; (c) other estimated quantifiable economic benefits, including but not necessarily limited to personal income; indirect, induced, long term, and temporary job creation; and private investment for each tax credit, tax deduction and tax incentive; (d) whether similar job creation or

private investment would have occurred without the existence of a state tax incentive; and (e) other qualitative economic benefits that improve the economy, and provide opportunities for advancement for New York residents, including: (i) global media exposure; (ii) increased tourism attraction and positioning of New York as a destination, providing quality of life amenities to assist with community development, placemaking, positioning communities for add-on private sector investment, making New York competitive on the basis of cost and other attraction amenities; and (iii) contributing to the positive perception of the state and its regions to assist with business attraction and creating economic opportunity for New Yorkers.

2. Prior to the analysis pursuant to subdivision one of this section, the economic impact firm that the department contracts with may solicit input from leaders in the business community, organized labor and economic development stakeholders, including, but not necessarily limited to representatives from nonprofits, academic institutions, and leading New York state community development experts.

3. Such analysis shall be completed and submitted to the department no later than January first, two thousand twenty-four and shall be posted publicly on the department's website within thirty days of submission to the department. The analysis shall also be submitted to the governor, the temporary president of the senate, the speaker of the assembly, and the chair of the senate finance committee and the chair of the assembly ways and means committee.

4. The economic impact firm providing the department's comprehensive analysis shall adhere to the requirements in this subdivision. Notwithstanding this subdivision, the department may contract with a firm upon a written determination by the commissioner which shall detail that such firm was awarded such contract on the basis that no firm meets the requirements set forth in this subdivision.

(a) Such economic impact firm shall be prohibited from providing analysis services to the department if the analysis partner having primary responsibility for the analysis, or the analysis partner responsible for reviewing the analysis, has performed analysis services

for the department in the past three fiscal years.

(b) Such economic impact firm shall be prohibited from performing any non-analysis services to the department contemporaneously with the analysis, including: (i) bookkeeping or other services related to the accounting records or financial statements of such department; (ii) financial information systems design and implementation; (iii) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (iv) actuarial services; (v) internal analysis outsourcing services; (vi) management functions or human services; (vii) broker or dealer, investment advisor, or investment banking services; and (viii) legal services and expert services unrelated to the analysis.

(c) Such economic impact firm shall be prohibited from providing analysis services to the department if an employee assigned to the analysis has performed analysis services for the department or has been employed by the department in the past three fiscal years.

ARTICLE 9

CORPORATION TAX

- Section 182. Additional franchise tax on certain oil companies.
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183. Franchise tax on transportation and transmission corporations and associations.
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§ 182. Additional franchise tax on certain oil companies. 1.

Notwithstanding any other provision of this chapter, or of any other law, for taxable years ending on or after June eighteenth, nineteen hundred eighty but before December thirty-first, nineteen hundred eighty-three, an annual tax is hereby imposed upon every oil company equal to two per centum of its gross receipts from all sources, or the portion thereof allocated within the state as hereinafter provided, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, for all or any part of each of its taxable years. In no event shall the tax imposed by this section be less than two hundred fifty dollars.

2. As used in this section: (a) The term "oil company" means every vertically integrated petroleum corporation or affiliate thereof formed for or engaged in the business of importing or causing to be imported into this state for sale in this state, extracting, producing, refining, manufacturing, compounding or selling petroleum. For purposes of this section, petroleum shall include, but shall not be limited to, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, distillate fuels, residual oil, crude oil or any similar product; a vertically integrated petroleum corporation or affiliate thereof means any domestic or foreign

corporation, which, either for its own account or with affiliates: (i) extract or produces in excess of one hundred thousand average barrels of crude oil per day, (ii) has a refining capacity in excess of one hundred seventy-five thousand average barrels of crude oil per day, and (iii) market or distributors for marketing gasoline, motor fuels, fuel oils, and similar products derived from the refining or manufacture of crude oil, whether such activities are carried on directly or indirectly in conjunction with or by means of an affiliate or affiliates; and affiliate means a corporation in which more than fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned, directly or indirectly, by the vertically integrated petroleum corporation or affiliate thereof.

(b) The term "gross receipts" means all receipts, whether from within or without the United States, whether in cash, credits or property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services, or other costs, interest or discount paid, or any other expense whatsoever but excluding such receipts which constitute consideration received by the oil company for the issuance or sale of shares of its capital stock or money lent to such company. Receipts received by reason of any sale of fuel oil (excluding diesel motor fuel) used for residential purposes shall not be included in gross receipts. Provided, however, gross receipts shall not include the receipts from any sale for resale to a purchaser which is an oil company subject to tax under this section. It shall be presumed that no receipts are receipts from a sale for resale to such purchaser unless such purchaser furnishes the oil company with a resale certificate in such form and under such terms and conditions as the tax commission may prescribe and such certificate is accepted in good faith by such oil company.

(c) The term "corporation" includes a corporation, joint stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument.

(d) The term "taxable year" means the oil company's taxable year for federal income tax purposes, or the part thereof during which such oil company is subject to tax under this section.

3. (a) The portion of the gross receipts of an oil company to be allocated within the state shall be determined as follows: multiply its gross receipts by an allocation percentage to be determined by ascertaining the percentage which the receipts of such oil company, computed on the cash or accrual basis according to the method of accounting used in the computation of its gross receipts, arising during the period covered by its report from (1) sales of its tangible personal property where shipments are made to points within this state, (2) services performed within the state, (3) rentals from property situated, and royalties from the use of patents or copyrights, within the state, and (4) all other business receipts earned within the state, bear to the total amount of the oil company's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business transactions, whether within or without the state. Receipts received by reason of any sale of fuel oil used for residential purposes and receipts from any sale for resale to a purchaser which is an oil company subject to tax under this section shall be included as a receipt in the computation of the allocation percentage.

(b) Where the tax commission decides that with respect to a certain oil company the method prescribed above does not fairly and equitably reflect its gross receipts from all sources within the state, the tax commission shall prescribe methods of allocation which fairly and equitably reflect gross receipts from all sources within the state.

4. Every oil company subject to tax under this section shall keep such records of its business in such form as the tax commission may require, and such records shall be preserved for a period of three years, except that the tax commission may consent to their destruction within that period or may require that they be kept longer.

5. Every oil company subject to tax hereunder shall annually file on or before the fifteenth day of the third month following the close of its taxable year a return which shall state the gross receipts for the period covered by such return. Returns shall be filed with the tax commission in a form prescribed by it setting forth such information as the tax commission may prescribe. Every oil company subject to tax

hereunder which ceases to exercise its franchise or to be subject to the tax imposed by this section shall transmit to the tax commission a return on the date of such cessation or at such other time as the tax commission may require covering each year or period for which no return was theretofore filed. Notwithstanding the foregoing provisions of this subdivision, the tax commission may require any oil company to file an annual return, which shall contain any data specified by it, regardless of whether the oil company is subject to tax under this section.

6. If any provision of this section conflicts with any other provision contained in this article, the provisions of this section shall control, but the provisions of this article which do not conflict with the provisions of this section shall apply with respect to the taxes under this section, insofar as they are, or may be made, applicable.

7. Any corporation which is subject to tax under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of this chapter shall not be subject to tax under this section.

8. An oil company which is not incorporated or organized under the laws of this state shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of this section, by reason of (a) the maintenance of cash balances with banks or trust companies in this state, or (b) the ownership of shares of stock or securities kept in this state, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such oil company, or (d) the maintenance of an office in this state by one or more officers or directors of the oil company who are not employees of the oil company if the company otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the

keeping of books or records of an oil company in this state if such books or records are not kept by employees of such oil company and such oil company does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) any combination of the foregoing activities.

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

10. Where a false or fraudulent resale certificate has been furnished to an oil company, the corporation furnishing such certificate shall be subject to a penalty equal to three per centum of the gross receipts which would have otherwise been taxable to such oil company if such certificate had not been furnished to such company. Such penalty shall be assessed, collected and paid in the same manner as the addition to tax with respect to a deficiency due to fraud provided for in subsection (e) of section one thousand eighty-five of this chapter is assessed, collected and paid.

11. If any amount of tax imposed by this section is not paid prior to September first, nineteen hundred eighty-three, interest on such amount at double the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of twelve percent per annum shall be paid for the period from such date to the date paid, whether or not any extension of time for payment was granted; provided, however, that the rate charged shall not exceed the maximum rate allowed pursuant to section 190.42 of the penal law. This subdivision shall apply with respect to taxes, or any portion thereof, which are overdue on or after September first, nineteen hundred eighty-three and shall apply only with respect to interest computed or computable for periods or portions of periods occurring on or after such date.

12. All taxes, interest and penalties collected or received by the tax commission under the taxes and penalties imposed by this section shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this section, the comptroller shall retain in his hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds under this section, out of which amount the comptroller shall pay any refunds to which oil companies shall be entitled under the provisions of this section. After reserving the amount required to pay such refunds, the comptroller shall deposit all remaining revenue pursuant to the provisions of subdivision one of section one hundred seventy-one-a of this chapter.

§ 182-a. Franchise tax on certain oil companies. 1. Notwithstanding any other provision of this chapter, or of any other law, for the period beginning with taxable years commencing on or after the first day of July, nineteen hundred eighty-one, but including that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which commences with the first day of July, nineteen hundred eighty-one, and ending with but not including taxable years commencing on or after the first day of July, nineteen hundred eighty-three, but including that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which terminates with the thirtieth day of June, nineteen hundred eighty-three, an annual tax is hereby imposed upon every oil company equal to three-quarters of one per centum of its gross receipts from sales of petroleum, or the portion thereof allocated within the state as hereinafter provided, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a

corporate or organized capacity, or of maintaining an office in this state, for all or any part of each of its taxable years. In no event shall the tax imposed by this section be less than two hundred fifty dollars.

2. As used in this section: (a) The term "oil company" means every corporation formed for or engaged in the business of importing or causing to be imported (by a person other than a corporation subject to tax under this section) into this state for sale in this state, extracting, producing, refining, manufacturing, or compounding petroleum. Provided, however, a corporation which is principally engaged in selling fuel oil (excluding diesel motor fuel) used for residential purposes shall not be considered an oil company. For purposes of this section, petroleum shall include, but shall not be limited to, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, distillate fuels, residual oil, crude oil or any similar product.

(b) The term "gross receipts from sales of petroleum" means all receipts from sales of petroleum, whether from within or without the United States, whether in cash, credits or property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services, or other costs, interest or discount paid, or any other expense whatsoever. Receipts received by reason of any sale of fuel oil (excluding diesel motor fuel) or liquified or liquifiable gases (except when sold in containers of less than one hundred pounds) used for residential purposes shall not be included in gross receipts.

However, to prevent the multiple application of the tax imposed by this section, gross receipts shall not include the receipts from any sale for resale to a purchaser which is an oil company subject to tax under this section. It shall be presumed that no receipts are receipts from a sale for resale to such purchaser unless such purchaser furnishes the oil company with a resale certificate in such form and under such terms and conditions as the tax commission may prescribe and such certificate is accepted in good faith by such oil company. In addition, it shall be presumed that no receipts are receipts received by reason of any sale of fuel oil (excluding diesel motor fuel) or liquified or

liquifiable gases (except when sold in containers of less than one hundred pounds) used for residential purposes unless the purchaser furnishes the oil company with a residential use certificate, in such form, at such times and under such terms and conditions as the tax commission may prescribe, and such certificate is accepted in good faith by such oil company. Provided, however, where a purchaser is a consumer of such fuel oil or liquified or liquifiable gases, such purchaser shall not be required to furnish such certificate and the oil company making such sale shall be required to maintain records of such transactions in such form and manner as the tax commission may prescribe. In order to assist the purchaser from an oil company in completing its residential use certificate, the tax commission may require such other purchasers of petroleum as it deems necessary to furnish their suppliers with residential use certificates.

(c) The term "corporation" includes a corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument.

(d) The term "taxable year" means the oil company's taxable year for federal income tax purposes, or the part thereof during which such oil company is subject to tax under this section.

(e) The term "petroleum" shall mean crude oil, plant condensate, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, petrochemical feedstocks, distillate fuels, residual oil, and liquified or liquifiable gases such as butane, ethylene, or propane.

3. The portion of the gross receipts from sales of petroleum of an oil company to be allocated within the state shall be determined by multiplying such gross receipts by the ratio which the gross receipts from sales of petroleum where shipments are made to points within the state bear to the gross receipts from sales of petroleum within and without the state. Receipts received by reason of any sale of fuel oil or liquified or liquifiable gases used for residential purposes and receipts received from a sale for resale as described in paragraph (b) of subdivision two of this section shall be included as a receipt in the computation of the allocation percentage.

4. Every oil company subject to tax under this section shall keep such records of its business in such form as the tax commission may require, and such records shall be preserved for a period of three years, except that the tax commission may consent to their destruction within that period or may require that they be kept longer.

5. Every oil company subject to tax hereunder shall annually file on or before the fifteenth day of the third month following the close of its taxable year a return which shall state the gross receipts from sales of petroleum for the period covered by such return. Returns shall be filed with the tax commission in a form prescribed by it setting forth such information as the tax commission may prescribe. Every oil company subject to tax hereunder which ceases to exercise its franchise or to be subject to the tax imposed by this section shall transmit to the tax commission a return on the date of such cessation or at such other time as the tax commission may require covering each year or period for which no return was theretofore filed. Notwithstanding the foregoing provisions of this subdivision, the tax commission may require any oil company to file an annual return, which shall contain any data specified by it, regardless of whether the oil company is subject to tax under this section.

6. If any provision of this section conflicts with any other provision contained in this article, the provisions of this section shall control, but the provisions of this article which do not conflict with the provisions of this section shall apply with respect to the taxes under this section, insofar as they are, or may be made, applicable.

7. Any corporation which is subject to tax under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of this article shall not be subject to tax under this section.

8. An oil company which is not incorporated or organized under the laws of this state shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of this section, by reason of (a) the

maintenance of cash balances with banks or trusts companies in this state, or (b) the ownership of shares of stock or securities kept in this state, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one of banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such oil company, or (d) the maintenance of an office in this state by one or more officers or directors of the oil company who are not employees of the oil company if the company otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the keeping of books or records of an oil company in this state if such books or records are not kept by employees of such oil company and such oil company does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) any combination of the foregoing activities.

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

10. (a) Where a false or fraudulent resale certificate or residential use certificate has been furnished to an oil company or to any other person, the corporation or person furnishing such certificate shall be subject to a penalty equal to three per centum of the gross receipts which would have otherwise been taxable to such oil company if such certificate had not been furnished to such company or to such other person. Such penalty shall be assessed, collected and paid in the same manner as the addition to tax with respect to a deficiency due to fraud provided for in subsection (e) of section one thousand eighty-five of this chapter is assessed, collected and paid.

(b) If a purchaser which is required by paragraph (b) of subdivision two of section one hundred eighty-two-a to provide an oil company or other supplier with a residential use certificate fails to provide such certificate or provides a certificate which understates the amount of fuel oil (excluding diesel motor fuel) or liquified or liquifiable gases (except when sold in containers of less than one hundred pounds) used for residential purposes, unless it is shown that such failure or understatement is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the tax commission and in the same manner as tax, be paid by such purchaser a penalty of one hundred dollars for each such failure or for each certificate containing such understatement; provided, however, in no event may more than five thousand dollars in such penalties be imposed against such purchaser in any calendar year.

11. All taxes, interest and penalties collected or received by the commissioner under the taxes and penalties imposed by this section shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this section, the comptroller shall retain in his hands such amount as the commissioner may determine to be necessary for refunds under this section, out of which amount the comptroller shall pay any refunds to which oil companies shall be entitled under the provisions of this section. After reserving the amount required to pay such refunds, the comptroller shall prior to April first, nineteen hundred ninety-four, deposit weekly forty-five percent of all remaining revenue in the mass transportation operating assistance fund to the credit of the public transportation systems operating assistance account therein, and fifty-five percent of such revenue in such fund to the credit of the metropolitan mass transportation operating assistance account therein, established by section eighty-eight-a of the state finance law, and on and after April first, nineteen hundred ninety-four, after reserving the amount to pay

such refunds, the comptroller shall deposit weekly all the revenues remaining in such mass transportation operating assistance fund to the credit of such public transportation systems operating assistance account therein. After reserving the amount to pay such refunds, the comptroller shall on and after April first, nineteen hundred ninety-six, deposit weekly forty-five percent of all remaining revenue in such mass transportation operating assistance fund to the credit of such public transportation systems operating assistance account therein, and fifty-five percent of such revenue in such fund to the credit of such metropolitan mass transportation operating assistance account therein.

§ 183. Franchise tax on transportation and transmission corporations and associations.--1. (a) The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments.

(b) For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, every domestic corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph, or telephone business, or formed for or principally engaged in the conduct of two or more of such businesses, and every domestic corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has made an election pursuant to subdivision ten of this section, and every other domestic corporation, joint-stock company or association

principally engaged in the conduct of a transportation or transmission business, except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has not made the election provided for in subdivision ten of this section, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation shall pay, in advance, an annual tax to be computed upon the basis of the amount of its capital stock within this state during the preceding year, and upon each dollar of such amount. Provided, however, a corporation, joint-stock company or association formed for or principally engaged in the transportation, transmission or distribution of gas, electricity or steam shall not be subject to tax under this section or section one hundred eighty-four of this article.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, during the period that the state tax on motor fuel, computed without regard to any reimbursement allowable under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter, exceeds two cents per gallon, the corporations, herein classed as "taxicab" and "omnibus," other than corporations described in subdivision nine of this section, shall be taxed under the provisions of article nine-a of this chapter and not under this section.

2. The measure of the amount of capital stock in this state, except as

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

3. Every corporation, joint-stock company or association, subject to taxation under this section shall, in any event, pay annually a minimum tax of not less than seventy-five dollars nor less than one and five-tenths mills on each dollar of such a portion of the net value of its issued capital stock, which net value for the purposes of this section shall be deemed to be not less than five dollars per share, as may be determined upon such of the bases herein provided for the measurement thereof as is applicable. The term "net value" as used in this section shall be construed to mean not less than the difference between a corporation's assets and liabilities, and not less than the average price at which such stock sold during the year covered by the report which forms the basis for the tax. But if the dividends paid on the par value of any kind of capital stock during any year ending with the thirty-first day of December amount to six per centum or more, the tax upon such kind of capital stock shall be at the rate of three-eighths of a mill for each one per centum of dividends paid and shall be computed upon the par value of such capital stock, unless such a tax be less than the minimum tax hereinbefore provided in this section, and the tax commission shall, for such purpose, make a fair and equitable apportionment of the assets of the corporation, joint-stock company or association, between or among the different kinds of stock,

provided, however, that the provisions of this sentence shall not apply to any corporation, joint stock company or association formed for or principally engaged in the conduct of a telephone business which is subject to the provisions of section one hundred eighty-four of this article and which has a total number of access lines in the state of one million or less.

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

5. The dividend rate for a corporation having stock without nominal or par value shall be determined by dividing the amount paid as a dividend or dividends during the year by the amount paid in on such stock and, if the rate is six per centum or more, the rate of three-eighths of a mill for each one per centum of dividends shall be applied to the amount paid in on such stock, unless such tax be less than the minimum tax hereinbefore in this section provided for. The amount of earned surplus at the time of change of classification of a corporation formerly taxed under article nine-a of this chapter shall be excluded in determining the amount of dividends paid. Any consideration given by a corporation for the purchase of its own stock in excess of the consideration received by it for the issuance of such stock, shall, for the purposes of this section, be considered as a dividend.

6. Every like corporation, joint-stock company or association organized, incorporated or formed under the laws of any other state, country or sovereignty shall pay a like tax for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, to be computed upon the basis of the measurement herein provided for the taxation of domestic corporations.

7. The owning or holding in this state by a foreign corporation, or by a trustee or trustees included under this section within the meaning of the term corporation as herein before defined, of property shall constitute doing business within this state within the intent of this section; provided, however, that the owning or holding in this state by a railroad, palace car or sleeping car corporation, business, navigation, canal, ferry, (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), or steamboat or any other corporation formed for or principally engaged in the operation of vessels included under this section within the meaning of the term corporation as herein before defined, of property used exclusively in interstate or foreign commerce shall not constitute doing business in this state within the intent of this section. However, a foreign corporation or such a trustee or trustees shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of this article, by reason of (a) the maintenance of cash balances with banks or trust companies in this state, or (b) the ownership of shares of stock or securities kept in this state, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in this state by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the keeping of books or records of a corporation in this state if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) any combination of the foregoing activities.

8. The measure of the capital stock in this state of a corporation

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

9. (a) A corporation, classed as a "taxicab" or "omnibus",

(1) which is organized, incorporated or formed under the laws of any other state, country or sovereignty, and

(2) which neither owns nor leases property in this state in a corporate or organized capacity, nor

(3) maintains an office in this state in a corporate or organized capacity, but

(4) which is doing business or employing capital in this state by conducting at least one but fewer than twelve trips into this state during the calendar year,

shall be exempt from the tax imposed under this section. If the only property a corporation owns or leases in this state is a vehicle or vehicles used to conduct trips, it shall not be considered, for purposes of subparagraph two of this paragraph, to be owning or leasing property in this state.

(b) For purposes of this subdivision, a corporation classed as a "taxicab" or "omnibus" shall be considered to be conducting a trip into New York state when one of its vehicles enters New York state and transports passengers to, from, or to and from a location in New York state. A corporation shall not be considered to be conducting a trip into New York state if its vehicle only makes incidental stops at locations in the state while in transit from a location outside New York state to another location outside New York state. The number of trips a corporation conducts into New York state shall be calculated by determining the number of trips each vehicle owned, leased or operated by the corporation conducts into New York state and adding those numbers together.

10. Election. Every corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad (including surface railroad, whether or not operated by steam, subway railroad or elevated railroad), palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses, which would be subject to article nine-A of this chapter if the election provided for under this subdivision were not made, may elect to be subject to the provisions of this section and, as applicable, section one hundred eighty-four of this article, rather than the provisions of such article nine-A. Such corporation, joint-stock company or association must make such election by the first day on which such corporation, joint-stock company or association would be required to file a return or report (without regard to extensions) under this section or section one hundred eighty-four of this article, or section one hundred eighty-three-a or one hundred eighty-four-a of this article, or article nine-A of this chapter. An election made pursuant to this subdivision shall continue to be in effect until revoked by the taxpayer. A revocation of the election to be subject to this section and, as applicable, section one hundred eighty-four of this article, shall be irrevocable. Such election, and a revocation thereof, shall be made in the manner prescribed by the commissioner, whether by regulation or otherwise. Such revocation shall apply as of the first day of January next following the end of a taxable year with respect to which the taxpayer had been subject to this section and, as applicable, section one hundred eighty-four of this article, by reason of an election made pursuant to this subdivision.

§ 183-a. Metropolitan transportation business tax surcharge on transportation and transmission corporations and associations.

1. The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code

pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments. Every corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph, or telephone business, or formed for or principally engaged in the conduct of two or more such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association principally engaged in the conduct of a transportation or transmission business, except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation, shall pay for the privilege of exercising its

corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transportation district in such corporate or organized capacity, or of maintaining an office in such district, a tax surcharge, which tax surcharge, in addition to the tax imposed by section one hundred eighty-three of this article, shall be computed at the rate of seventeen percent of the tax imposed under such section for such years or any part of such years after the deduction of any credits otherwise allowable under this article; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section one hundred eighty-three of this article after the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district as so determined in the manner prescribed by the rules and regulations promulgated by the commissioner.

2. The owning or holding in the metropolitan commuter transportation district by a corporation, or by a trustee or trustees included under this section within the meaning of the term corporation as hereinbefore defined, of property shall constitute doing business in the metropolitan commuter transportation district within the meaning of this section; provided, however, that the owning or holding in such district by a railroad, palace car or sleeping car corporation, business, navigation, canal, ferry, (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), or steamboat or any other corporation formed for or principally engaged in the operation of vessels included under this section within the meaning of the term corporation as hereinbefore defined, of property used exclusively in interstate or foreign commerce shall not constitute doing business in such district within the intent of this section. However, a corporation or such trustee or trustees shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in the metropolitan commuter transportation district, for the purposes of this section, by reason of (a) the maintenance of cash balances with banks or trust companies in the metropolitan commuter transportation district, or (b) the ownership of shares of stock or securities kept in the metropolitan commuter transportation district, if

kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in such district by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in such district, and does not employ capital or own or lease property in such district, or (e) the keeping of books or records of a corporation in such district if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in such district, or (f) any combination of the foregoing activities. Provided, further, that a railroad, palace car or sleeping car corporation, navigation, canal, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), steamboat, or any other corporation formed for or principally engaged in the operation of vessels whose only activity in the metropolitan commuter transportation district is (i) the maintenance of an office in such district and for the employing of capital in such district and (ii) the use of property exclusively in interstate or foreign commerce, shall not be subject to the tax surcharge imposed by this section.

3. The term metropolitan commuter transportation district as used in this section shall be defined pursuant to section twelve hundred sixty-two of the public authorities law.

4. Notwithstanding any contrary provisions of state or local law, the tax surcharge imposed under this section shall not be allowed as a deduction in the computation of any state or local tax imposed under this chapter or any chapter or local law. Furthermore, the credits otherwise allowable under this article shall not be allowed against the tax surcharge imposed by this section.

5. The report covering the tax surcharge which must be calculated pursuant to this section based upon the tax reportable on the report due by March fifteenth of any year under section one hundred eighty-three of this article, for taxable years beginning before January first, two thousand seventeen, and on the report due by April fifteenth of any year under section one hundred eighty-three of this article, for taxable years beginning on or after January first, two thousand seventeen, shall be filed on or before March fifteenth of the year next succeeding such year, for taxable years beginning before January first, two thousand seventeen, and on or before April fifteenth of the year next succeeding such year, for taxable years beginning on or after January first, two thousand seventeen. An extension pursuant to section one hundred ninety-three of this article shall be allowed only if a taxpayer files with the commissioner an application for extension in such form as said commissioner may prescribe by regulation and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax surcharge required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's report for the preceding year, if such preceding year consisted of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the report is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable to section one hundred eighty-three of this article are applicable to the tax surcharge imposed by this section except for section one hundred ninety-two of this article.

§ 184. Additional franchise tax on transportation and transmission corporations and associations.-- 1. The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof.

Every corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph or local telephone business, or formed for or principally engaged in the conduct of two or more of such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association formed for or principally engaged in the conduct of a transportation or transmission business (other than a telephone business), except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and, except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the

foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation and for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or maintaining an office in this state, shall pay a franchise tax which shall be equal to three-eighths of one percent for taxable years commencing after two thousand, upon its gross earnings from all sources within this state; except that, for taxable years commencing on or after January first, nineteen hundred ninety, every corporation, joint-stock company or association formed for or principally engaged in the conduct of local telephone business, or telegraph business shall pay a franchise tax which shall be equal to three-eighths of one percent for taxable years commencing after two thousand, upon its gross earnings from all sources within this state, except that a corporation, joint-stock company or association formed for or principally engaged in the conduct of a local telephone business shall exclude the following earnings (but not in any event earnings derived by such taxpayer from the provision of carrier access services) derived by such taxpayer from sales for ultimate consumption of telecommunications service to its customers (i) thirty percent of separately charged intra-LATA toll service (which shall also include interregion regional calling plan service) and (ii) one hundred percent of separately charged inter-LATA, interstate or international telecommunications service; and except that corporations, joint-stock companies or associations formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), navigation or any corporation formed for or principally engaged in the operation of vessels, shall pay a franchise tax which shall be equal to three-quarters of one per centum upon its

gross earnings from all sources within this state, excluding earnings derived from business of an interstate or foreign character; except that for taxable years beginning in nineteen hundred ninety-seven or thereafter, in the case of a corporation, joint-stock company or association which, with respect to taxable years beginning after nineteen hundred ninety-seven, has made an election pursuant to subdivision ten of section one hundred eighty-three of this article and which is formed for or principally engaged in the conduct of surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses, such corporation, joint-stock company or association shall pay a franchise tax which shall be equal to three-eighths of one percent for taxable years commencing after two thousand, upon its gross earnings from all sources within this state, provided that in the case of a corporation, joint-stock company or association formed for or principally engaged in the conduct of surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car or sleeping car business, or formed for or principally engaged in the conduct of two or more of such businesses, such gross earnings shall not include earnings derived from business of an interstate or foreign character.

Provided, however, with respect to railroad, elevated railroad, palace car or sleeping car business or any other corporation formed for or principally engaged in the conduct of a railroad business and canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), navigation or any corporation formed for or principally engaged in the operation of vessels where the gross earnings from such transportation business both originating and terminating within this state and traversing both this state and another state or states or country shall be subject to the franchise tax imposed by this section (except where such corporation, joint-stock company or association is formed for or principally engaged in the conduct of a railroad (including surface railroad, whether or not operated by steam, subway railroad or elevated railroad), palace car or sleeping car business or formed for or

principally engaged in the conduct of two or more of such businesses, and has not made the election provided for under subdivision ten of section one hundred eighty-three of this article) and such earnings shall be allocated to this state in the same ratio that the mileage within the state bears to the total mileage of such business. Provided, further, a corporation, joint-stock company or association formed for or principally engaged in the transportation, transmission or distribution of gas, electricity or steam shall not be subject to tax under this section or section one hundred eighty-three of this article.

The term "local telephone business" means the provision or furnishing of telecommunication services for hire wherein the service furnished by the provider thereof consists of carrier access service or the service originates and terminates within the same local access and transport area ("LATA"), a local access and transport area being that geographic area as established and approved, and as so set and in existence on July first, nineteen hundred ninety-four, pursuant to the modification of final judgment in United States v. Western Electric Company (civil action no. 82-0192) in the United States district court for the District of Columbia or within the LATA-like Rochester non-associated independent area.

The term "telecommunication services" shall have the meaning ascribed to such term in section one hundred eighty-six-e of this article.

1-a. Where a taxpayer is a partner, member or associate of a publicly traded partnership or an association which is subject to the tax imposed under this section, the amount to be included in such taxpayer's gross earnings with respect to such partnership or association shall be the amount received with respect to such partnership or association which is required to be reported as dividends to the United States treasury department.

2. (a) During the period that the state tax on motor fuel, computed without regard to any reimbursement allowable under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter, exceeds two cents per gallon the corporations herein classed as

"taxicab" and "omnibus", other than corporations described in paragraph (b) of this subdivision, shall be taxed under the provisions of article nine-a of the tax law and as other business corporations are taxed and not upon their gross receipts.

(b) (1) A corporation classed as a "taxicab" or "omnibus",

(i) which is organized, incorporated or formed under the laws of any other state, country or sovereignty, and

(ii) which neither owns nor leases property in this state in a corporate or organized capacity, nor

(iii) maintains an office in this state in a corporate or organized capacity, but

(iv) which is doing business or employing capital in this state by conducting at least one but fewer than twelve trips into this state during the calendar year, shall not be taxed under the provisions of this article. If the only property a corporation owns or leases in this state is a vehicle or vehicles used to conduct trips, it shall not be considered, for purposes of clause (ii) of this subparagraph, to be owning or leasing property in this state.

(2) For purposes of this subdivision, a corporation classed as a "taxicab" or "omnibus" shall be considered to be conducting a trip into New York state when one of its vehicles enters New York state and transports passengers to, from, or to and from a location in New York state. A corporation shall not be considered to be conducting a trip into New York state if its vehicle only makes incidental stops at locations in the state while in transit from a location outside New York state to another location outside New York state. The number of trips a corporation conducts into New York state shall be calculated by determining the number of trips each vehicle owned, leased or operated by the corporation conducts into New York state and adding those numbers together.

3. Any corporation, joint-stock company or association formed for or principally engaged in the conduct of subway railroad, elevated railroad, or surface railroad not operated by steam, business, whose property is leased to another railroad corporation, shall only be required under this section to pay an annual tax at the rate of four and one-half per centum upon the dividends paid during the year ending on

the thirty-first day of December in excess of four per centum upon the amount of its capital stock, provided, however, that for the year ending on the thirty-first day of December nineteen hundred seventy-six, as described in subdivision two of section one hundred ninety-two of this chapter, the tax shall be paid upon dividends paid during the months of July through December of such year in excess of two per centum upon the amount of its capital stock, except that where the property leased is operated by a receiver and the gross earnings are not included with the gross earnings of the lessee for the purposes of taxation under this section, then such receiver shall be required to pay the tax upon gross earnings as hereinbefore provided.

4. Allocation of gross earnings from transportation and transmission services.--(a) General. A transportation or transmission corporation shall determine its gross earnings from transportation and transmission services within this state (except as otherwise provided for in this subdivision) by multiplying its gross earnings from transportation and transmission within and without the state by a fraction, the numerator of which is the taxpayer's mileage within this state and the denominator of which is the taxpayer's mileage within and without this state during the period covered by the report or reports required by this chapter.

(b) Corporations engaged in the operation of vessels. A corporation principally engaged in the operation of vessels shall determine its gross earnings from transportation services within this state during the period covered by the report or reports required by this chapter by multiplying its gross earnings from transportation services within and without this state by a percentage which represents the ratio of the aggregate number of working days of the vessels it owns or leases in all navigable lakes, rivers, streams and waters within this state and in New York territorial waters to the aggregate number of working days of all the vessels it owns or leases during such period.

(c) Telephone and telegraph corporations. A telephone or telegraph corporation shall determine its gross earnings from transmission services within this state during the period covered by the report or reports required by this chapter by totaling its gross operating revenue from transmission services performed wholly within this state plus the portion of revenue from interstate and foreign transmission service

attributable to this state during such report period.

(d) All other gross earnings, if any, shall be allocated to this state in the manner prescribed by rules and regulations promulgated by the tax commission.

(e) With respect to other types of transportation and transmission corporations or where the tax commission decides that with respect to a certain corporation the method prescribed above does not fairly and equitably reflect gross earnings from all sources within this state, the tax commission shall prescribe methods of allocation or apportionment which fairly and equitably reflect gross earnings from all sources within this state. Also, the tax commission may, in order to properly reflect gross earnings, determine the report period in which any item of gross earnings shall be included without regard to the method of accounting employed by a corporation taxable hereunder.

7-a. A railroad, palace car or sleeping car corporation, navigation, canal, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), steamboat, or any other corporation formed for or principally engaged in the operation of vessels whose only activity in this state is (i) the maintenance of an office in this state and for the employing of capital in this state and (ii) the use of property exclusively in interstate or foreign commerce, shall not be subject to the tax imposed by this section.

§ 184-a. Additional metropolitan transportation business tax surcharge on transportation and transmission corporations and associations services.

1. The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), and a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof. Every corporation, joint-stock company or association formed for or

principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph or local telephone business, or formed for or principally engaged in the conduct of two or more such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or principally engaged in the conduct of two or more such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association formed for or principally engaged in the conduct of a transportation or transmission business (other than a telephone business) except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or principally engaged in the conduct of two or more such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation, shall pay for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or

of owning or leasing property in the metropolitan commuter transportation district in such corporate or organized capacity, or of maintaining an office in such district, a tax surcharge, which tax surcharge, in addition to the tax imposed by section one hundred eighty-four of this article, shall be computed at the rate of seventeen percent of the tax imposed under such section for such taxable years or any part of such taxable years after the deduction of any credits otherwise allowable under this article; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section one hundred eighty-four of this article after the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district. Provided, however, that for taxable years beginning in two thousand and thereafter, for purposes of this subdivision the tax imposed under section one hundred eighty-four of this article shall be deemed to have been imposed at the rate of three-quarters of one percent, except that in the case of a corporation, joint-stock company or association which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, for purposes of this subdivision the tax imposed under section one hundred eighty-four of this article shall be deemed to have been imposed at the rate of six-tenths of one percent.

The term "local telephone business" shall have the same meaning as such term is used in section one hundred eighty-four of this article. The term "telecommunication services" shall have the meaning ascribed to such term in section one hundred eighty-six-e of this article.

2. (a) A transportation and transmission corporation shall determine the portion of its tax attributable to business activity carried on in the metropolitan commuter transportation district (except as otherwise provided for in this subdivision) by multiplying the tax imposed under section one hundred eighty-four of this article by a fraction, the numerator of which is the taxpayer's mileage within the metropolitan commuter transportation district, and the denominator of which is the taxpayer's mileage within the entire state during the period covered by the report or reports required by this article.

(b) A corporation principally engaged in the operation of vessels shall determine the portion of its tax attributable to business activity carried on in the metropolitan commuter transportation district during the period covered by the report or reports required by this section by multiplying the tax imposed under section one hundred eighty-four of this article by a percentage which represents the ratio of the aggregate number of working days of the vessels it owns or leases in all navigable lakes, rivers, streams and waters within the metropolitan commuter transportation district to the aggregate number of working days of all the vessels it owns or leases within the entire state and in the New York territorial waters during such period.

(c) A telephone or telegraph corporation shall determine the portion of its tax attributable to business activity carried on within the metropolitan commuter transportation district by multiplying the tax imposed under section one hundred eighty-four of this article by the ratio of its total gross operating revenue from transmission services performed wholly within the metropolitan commuter transportation district to its total gross operating revenue from transmission services performed within the entire state during the period covered by the report or reports required under this article.

(d) With respect to other types of transportation and transmission corporations or where the tax commission decides that with respect to a certain corporation the method prescribed above does not fairly and equitably reflect gross earnings from all sources within the metropolitan commuter transportation district, the tax commission shall prescribe methods of allocation or apportionment which fairly and equitably reflect gross earnings from all sources within such district. Also, the tax commission may, in order to properly reflect gross earnings, determine the report period in which any item of gross earnings shall be included without regard to the method of accounting employed by a corporation taxable hereunder.

3. The term metropolitan commuter transportation district as used in this section shall be defined pursuant to section twelve hundred sixty-two of the public authorities law.

4. Notwithstanding any contrary provisions of state or local law, the

tax surcharge imposed under this section shall not be allowed as a deduction in the computation of any state or local tax imposed under this chapter or any chapter or local law. Furthermore, the credits otherwise allowable under this article shall not be allowed against the tax surcharge imposed by this section.

5. The provisions concerning reports under section one hundred ninety-two of this article shall be applicable to this section. An extension pursuant to section one hundred ninety-three shall be allowed only if a taxpayer files with the commissioner an application for extension in such form as said commissioner may prescribe by regulation and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax surcharge required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's report for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the report is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable to section one hundred eighty-four of this article are applicable to the tax surcharge imposed by this section.

§ 186-a. Tax on the furnishing of utility services. 1. Notwithstanding any other provision of this chapter, or of any other law, (a) a tax equal to three and one-quarter percent through December thirty-first, nineteen hundred ninety-nine, and two and one-half percent on and after

January first, two thousand of its gross income is hereby imposed upon every provider of telecommunication services doing business in this state which is subject to the supervision of the state department of public service which has a gross income for the year ending December thirty-first in excess of five hundred dollars;

(b) a tax equal to (1) two and five-tenths percent on and after January first, two thousand through December thirty-first, two thousand, two and forty-five one hundredths percent from January first, two thousand one through December thirty-first, two thousand one, two and four-tenths percent from January first, two thousand two through December thirty-first, two thousand two, two and twenty-five one hundredths percent from January first, two thousand three through December thirty-first, two thousand three, two and one hundred twenty-five one thousandths percent from January first, two thousand four through December thirty-first, two thousand four and two percent commencing January first, two thousand five and thereafter of that portion of its gross income derived from the transportation, transmission or distribution of gas or electricity by means of conduits, mains, pipes, wires, lines or the like and (2) two and one-tenth percent from January first, two thousand through December thirty-first, two thousand, two percent from January first, two thousand one through December thirty-first, two thousand one, one and nine-tenths percent from January first, two thousand two through December thirty-first, two thousand two, eighty-five one hundredths of one percent from January first, two thousand three through December thirty-first, two thousand three, four-tenths of one percent from January first, two thousand four through December thirty-first, two thousand four and zero percent commencing January first, two thousand five of all of its other gross income, is hereby imposed upon every utility not taxed under paragraph (a) of this subdivision doing business in this state which is subject to the supervision of the state department of public service which has a gross income for the year ending December thirty-first in excess of five hundred dollars, except motor carriers or brokers subject to such supervision under the public service law; and

(c) a tax equal to three and one-quarter percent through December thirty-first, nineteen hundred ninety-nine, two and one-tenth percent from January first, two thousand through December thirty-first, two

thousand, two percent from January first, two thousand one through December thirty-first, two thousand one, one and nine-tenths percent from January first, two thousand two through December thirty-first, two thousand two, eighty-five one hundredths of one percent from January first, two thousand three through December thirty-first, two thousand three, four-tenths of one percent from January first, two thousand four through December thirty-first, two thousand four and zero percent commencing January first, two thousand five of its gross operating income is hereby imposed upon every other utility doing business in this state which has a gross operating income for the year ending December thirty-first in excess of five hundred dollars, which taxes shall be in addition to any and all other taxes and fees imposed by any other provision of law for the same period.

2. As used in this section, (a) the word "utility" includes every person (including every provider of telecommunication services) subject to the supervision of the state department of public service, except persons engaged in the business of operating on the public highways of this state one or more omnibuses, having a seating capacity of more than seven persons, and persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, and also includes every person (whether or not such person is subject to such supervision) who sells gas, electricity, steam, water or refrigeration, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water or refrigerator service, by means of mains, pipes, or wires; regardless of whether such activities are the main business of such person or are only incidental thereto, or of whether use is made of the public streets;

(b) the word "person" means persons, corporations, companies, associations, joint-stock companies or associations, partnerships and limited liability companies, estates, assignee of rents, any person acting in a fiduciary capacity, or any other entity, and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or by any other means, except the state; municipalities, political and civil subdivisions of the state or municipality and public districts (provided, however, that with respect to gas, electricity and

gas or electric service, including the sale of the transportation, transmission or distribution of gas or electricity, such municipalities, political and civil subdivisions and public districts shall be excluded from the definition of "person" if they own and operate facilities which are used to generate or distribute electricity or distribute gas and they distribute and sell such gas or electricity solely at retail, solely within their respective jurisdiction; or provided, further, with respect to the sale of electricity or the transportation, transmission or distribution of electricity, a municipality shall be excluded from the definition of "person" if it sells electricity at retail where all such electricity (excluding temporary substitution power during outages or periods of reduced output) has been generated solely by and purchased solely from the state or a public authority of the state); corporations and associations which are organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which are described in paragraph four of subdivision (a) of section eleven hundred sixteen of this chapter where such organization resells such gas or electricity or gas or electric service as landlord to its tenants in buildings owned by such organization; and excepting a corporation organized and operated exclusively for the purpose of leasing from a city in this state a water-works system designed to supply water at cost to users thereof for discharge, either before or after industrial use, into a river within such city in order to improve the flow and condition of such river and thereby to provide a means to relieve such river from pollution;

(c) the words "gross income" mean and include receipts received in or by reason of any sale, conditional or otherwise, (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in gross income) made or service rendered for ultimate consumption or use by the purchaser in this state, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever.

(1) Provided, however, that all receipts from sales of the

transportation, transmission or distribution of gas or electricity by means of conduits, mains, pipes, wires, lines or the like, rendered or performed in this state, shall be included in gross income except receipts from (i) sales of the transportation, transmission or distribution of gas or electricity to (A) a utility (excluding a public authority) which is supervised by this state or another jurisdiction (where an element of such supervision includes rate regulation and, for a utility supervised by another jurisdiction, such supervision includes rate regulation and such gas or electricity is delivered for ultimate consumption or use outside this state), (B) a municipality which owns and operates facilities which are used to generate or distribute electricity or distribute gas and which distributes and sells such electricity or gas solely at retail, solely within its respective jurisdiction, or (C) a public authority of this state where such public authority is primarily engaged in the generation and transmission or distribution of electricity or the distribution of electricity or gas and at least ninety-five percent of the assets of which are so devoted, provided, that, if the service area or district of the authority is less than the entire state, the excluded receipt shall be limited to receipts derived from the sale of transportation, transmission or distribution of gas or electricity, which electricity or gas will be sold by such authority at retail within its service area or district; where, as the case may be, such utility or authority purchasing such transportation, transmission or distribution sells the gas or electricity being so transported, transmitted or distributed, (ii) sales of the transportation, transmission or distribution of electricity to a municipality where the electricity being transported has been purchased by such municipality and has been generated solely by and purchased solely from the state or a public authority of the state (except where the electricity being transported constitutes temporary substitution power being supplied during outages or periods of reduced output) and where such municipality purchasing such transportation, transmission or distribution, sells solely at retail, solely within its respective jurisdiction, the electricity being so transported, transmitted or distributed, (iii) sales of the transportation, transmission or distribution of gas or electricity to corporations and associations which are organized and operated exclusively for religious, charitable

or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which are described in paragraph four of subdivision (a) of section eleven hundred sixteen of this chapter where such organization resells such transportation, transmission or distribution as part of a bundled gas or electric service as landlord to its tenants in buildings owned by such organization, or (iv) sales of the transportation, transmission or distribution of gas or electricity, not otherwise excluded, to nonresidential customers, but only in accordance with the following schedule: for the sales during the calendar years two thousand and two thousand one, zero percent of the receipts from such sales shall be excluded; for the sales during the calendar year two thousand two, twenty-five percent of the receipts from such sales shall be excluded; for sales during the calendar year two thousand three, fifty percent of the receipts from such sales shall be excluded; for sales during the calendar year two thousand four, seventy-five percent of the receipts from such sales shall be excluded; and for sales thereafter, one hundred percent of such sales shall be excluded. For the purposes of this clause, the term "nonresidential customers" means those customers whose use of gas or electricity, or gas or electric service does not qualify for the reduced rate of sales and compensating use tax on gas, electricity, or gas or electric service under section eleven hundred five-A of article twenty-eight of this chapter.

(2) Provided, further, receipts received from the sale of the transportation, transmission or distribution of gas or electricity shall mean the receipts received from customers representing the noncommodity charges for gas or electric service.

(3) Provided, further, gross income with respect to a provider of telecommunication services shall not include receipts from the sale of telecommunication services as such services are defined in section one hundred eighty-six-e of this article.

(4) Provided, further, sales of gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service to a landlord that is a person as defined in this subdivision for resale by such landlord to a tenant, for consumption by such tenant as an incident to such landlord's activity of renting premises to such tenant, shall be subject to the tax imposed under this section even though such sales are

not for ultimate consumption by such landlord. Provided, further, receipts derived by a landlord from the resale for such gas, electricity, steam, water or refrigeration or furnishing gas, electric, steam, water or refrigerator service to such tenant shall be conclusively presumed to be equal to such landlord's cost of the same, and, if the tax under this section was imposed on the sale to such landlord, no additional tax under this section shall be owing on the sale by such landlord to such tenant. If, however, the tax under this section was not imposed on such sale to the landlord, then such landlord on the sale to its tenant shall file a return hereunder based on such landlord's cost (including any associated transportation cost) of such gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service.

(5) "Gross income" also includes profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the period for which a return is made); also receipts from interest, dividends, and royalties, derived from sources within this state other than such as are received from a corporation a majority of whose voting stock is owned by the taxpaying utility, without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof, also profits from any transaction (except sales for resale and rentals) within this state whatsoever;

(d) the words "gross operating income" mean and include receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, electricity, steam, water or refrigeration, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water or refrigerator service in this state, including cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expenses whatsoever. Provided, however, there shall be excluded from gross operating income receipts representing the amount received from the resale of the transportation, transmission or distribution of gas or electricity in

this state where such transportation, transmission or distribution being resold is provided by a utility subject to tax under paragraph (b) of subdivision one of this section; the receipts representing the amount received from resale of such transportation, transmission or distribution shall be the amount received for such transportation, transmission or distribution by such utility which initially provided such transportation, transmission or distributions. Provided, further, sales of gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service to a landlord that is a person as defined in this subdivision for resale by such landlord to a tenant, for consumption by such tenant as an incident to such landlord's activity of renting premises to such tenant, shall be subject to the tax imposed under this section even though such sales are not for ultimate consumption by such landlord. Provided, further, receipts derived by a landlord from the resale of such gas, electricity, steam, water or refrigeration or furnishing gas, electric, steam, water or refrigerator service to such tenant shall be conclusively presumed to be equal to such landlord's cost of the same, and, if the tax under this section was imposed on the sale to such landlord, no additional tax under this section shall be owing on the sale by such landlord to such tenant. If the tax under this section was not imposed on such sale to the landlord, then such landlord on the sale to its tenant shall file a return hereunder based on such landlord's cost (including any associated transportation cost) of such gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service;

(e) the term "telecommunication services" shall have the same meaning as such term is defined in section one hundred eighty-six-e of this article;

(f) The word "premises" means and includes any real property or part thereof, and any structure thereon or space therein; and

(g) the word "tenant" means and includes a person paying, or required to pay, rent for premises as a lessee, sublessee, licensee or concessionaire.

2-a. Tax adjustment for utilities with financial resource asset for taxable years commencing on and after January first, nineteen hundred ninety-two. Notwithstanding any provision of this section to the

contrary, in the event that a utility which is taxable under this section is an electric corporation, as defined in subdivision thirteen of section two of the public service law, which, on or before the effective date of this subdivision, has been permitted by the public service commission to establish for ratemaking purposes a financial resource asset (which asset shall represent, in an amount approved by the public service commission on or before the effective date of this subdivision, the present value of a stream of future cash flows, rather than actual land, land rights, physical structures, improvements or other physical items, franchises or intangible plant), such an electric corporation shall be allowed an adjustment by way of the allowance of a deduction from its gross income subject to tax under subdivision one of this section equal to the amount by which (a) that portion of gross income received in any year after nineteen hundred ninety-one which represents the total return authorized by the public service commission to be recovered in rates on the financial resource asset, including amortization, exceeds (b) that portion of gross income received in the twelve-month period immediately preceding the month in which the financial resource asset is established pursuant to authorization of the public service commission and which represents (i) the total revenue derived from any financial stability adjustment and (ii) the total return on interest-bearing construction work in progress in the rate base permitted by the public service commission. No electric corporation shall be allowed the tax adjustment authorized by this subdivision until it shall file, together with the return required to be filed pursuant to subdivision four of this section, a certificate for the period covered by the return from the department of public service verifying that the calculation of such tax adjustment complies with this subdivision. The adjustment to gross income allowed by this subdivision shall not be applicable in calculating any other tax imposed or authorized to be imposed by this chapter or any other law, and the amount of tax surcharge equal to seventeen per centum imposed pursuant to section one hundred eighty-six-c of this article, and the amount of the tax surcharge imposed under section one hundred eighty-eight of this article, shall be calculated and payable as if the adjustment provided in this subdivision were not allowed.

3. Every utility subject to tax under this section shall keep such records of its business and in such form as the tax commission may require, and such records shall be preserved for a period of three years, except that the tax commission may consent to their destruction within that period or may require that they be kept longer.

4. Every utility subject to tax hereunder shall file, on or before March fifteenth of each year, a return for the year ended on the preceding December thirty-first, for taxable years beginning before January first, two thousand sixteen, except that the year ended on December thirty-first, nineteen hundred seventy-six shall be deemed, for the purposes of this subdivision, to have commenced on June first, nineteen hundred seventy-six, and shall file, on or before April fifteenth of each year, a return for the year ended on the preceding December thirty-first, for taxable years beginning on or after January first, two thousand sixteen, including any period for which the tax imposed hereby or by any amendment hereof is effective, each of which returns shall state the gross income or gross operating income for the period covered by each such return. Returns shall be filed with the commissioner of taxation and finance on a form to be furnished by the commissioner for such purpose and shall contain such other data, information or matter as the commissioner may require to be included therein. Notwithstanding the foregoing provisions of this subdivision, the commissioner may require any utility to file an annual return, which shall contain any data specified by the commissioner, regardless of whether the utility is subject to tax under this section; and the commissioner may require a landlord selling to a tenant gas, electric, steam, water or refrigeration or furnishing gas, electric, steam, water or refrigerator service, where the same has been subjected to tax under this section on the sale to such landlord, to file, on or before the fifteenth day of March of each year, for taxable years beginning before January first, two thousand sixteen, and on or before the fifteenth day of April of each year, for taxable years beginning on or after January first, two thousand sixteen, an information return for the year ended on the preceding December thirty-first, covering such year in such form and containing such data as the commissioner may specify. Every return shall have annexed thereto a certification by the head of the utility making

the same, or of the owner or of a co-partner thereof, or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that the statements contained therein are true.

5. If any provision of this section conflicts with any other provision contained in this article, the provision of this section shall control, but the provisions of this article which do not conflict with the provisions of this section shall apply with respect to the taxes under this section, so far as they are, or may be made applicable.

6. The tax imposed by this section shall be charged against and be paid by the utility and may be added as a separate item to bills rendered by the utility to customers. Upon request the utility shall furnish a statement of the amount of tax imposed by this section to its customers for bills rendered on or after January first, two thousand.

7. Notwithstanding any other provision contained in this or any other law, in the event the city of New York shall enact a local law imposing a tax on utilities, such as it imposed by this section, except as to the rate of tax, the tax commission, in its discretion, may arrange with the chief fiscal officer of said city for the collection by him of the tax imposed by this section with respect to items that enter into the tax base for both the tax imposed by said city and that imposed pursuant to this section, and for the remittance by him of the tax imposed by this section to the tax commission for disposition as in this article provided. If such an arrangement be made, all the provisions of the local law of said city imposing the local tax shall apply with respect to the tax imposed by this section in the same manner as if the local tax rate had included the tax imposed by this section.

9. Notwithstanding any other provision contained in this chapter or any other law, any surcharge collected or any administrative fee retained by any telephone corporation acting as collection agent for a municipality pursuant to the provisions of article six of the county law shall not be considered as nor included in the determination of gross income or gross operating income of or by such corporation.

§ 186-c. Metropolitan transportation business tax surcharge on utility services and excise tax on sale of telecommunication services.

1. (a) (1) Every utility doing business in the metropolitan commuter transportation district shall pay a tax surcharge, in addition to the tax imposed by section one hundred eighty-six-a of this article, to be computed at the rate of seventeen percent of the tax imposed under such section after the deduction of credits otherwise allowable under this article except any utility credit provided for by article thirteen-A of this chapter; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section one hundred eighty-six-a of this article after the deduction of credits otherwise allowable under this article, except any utility credit provided for by article thirteen-A of this chapter, which is attributable to the taxpayer's gross income or gross operating income from business activity carried on within the metropolitan commuter transportation district.

(2) Provided however, that in the case of the tax imposed under paragraph (a) of subdivision one of section one hundred eighty-six-a of this article (relating to providers of telecommunications services) such tax surcharge shall be calculated as if the tax imposed under section one hundred eighty-six-a of this article were imposed at a rate of three and one-half percent.

(b) (1) In addition to the surcharge imposed by paragraph (a) of this subdivision, there is hereby imposed a surcharge on the gross receipts from telecommunication services, except for the gross receipts from mobile telecommunication services that are subject to tax under subparagraph two of this paragraph, relating to the metropolitan commuter transportation district at the rate of seventeen percent of the state tax rate under section one hundred eighty-six-e of this article. All the definitions and other provisions of section one hundred eighty-six-e of this article shall apply to the tax imposed by this subparagraph with such modification and limitation as may be necessary (including substituting the words "metropolitan commuter transportation district" for "state" where appropriate) in order to adapt the language

of such section one hundred eighty-six-e of this article to the surcharge imposed by this subparagraph within such metropolitan commuter transportation district so as to include (i) any intra-district telecommunication services, (ii) any inter-district telecommunication services which originate or terminate in such district and are charged to a service address therein regardless of where the amounts charged for such services are billed or ultimately paid, and (iii) as apportioned to such district, private telecommunication services. Provided however, such tax surcharge shall be calculated as if the tax imposed under section one hundred eighty-six-e of this article were imposed at a rate of three and one-half percent.

(2) In addition to the surcharge imposed by paragraph (a) of this subdivision, there is hereby imposed a surcharge on the gross receipts from mobile telecommunication services relating to the metropolitan commuter transportation district at the rate of seven-tenths and two-hundredths and one-thousandth percent on and after May first, two thousand fifteen. All the definitions and other provisions of section one hundred eighty-six-e of this article shall apply to the tax imposed by this subparagraph with such modification and limitation as may be necessary (including substituting the words "metropolitan commuter transportation district" for "state" where appropriate) in order to adapt the language of such section one hundred eighty-six-e of this article to the surcharge imposed by this subparagraph within such metropolitan commuter transportation district so as to include any mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within such metropolitan commuter transportation district.

2. If the tax imposed under section one hundred eighty-six-a of this article is on the taxpayer's gross income, the portion of the tax attributable to gross income from business activity carried on within the metropolitan commuter transportation district shall be determined by multiplying the tax imposed under section one hundred eighty-six-a of this article by the ratio of the taxpayer's gross income from all sources within the metropolitan commuter transportation district to its gross income from all sources within the entire state.

3. If the tax imposed under section one hundred eighty-six-a of this article is on the taxpayer's gross operating income, the portion of the tax attributable to gross operating income from business activity carried on within the metropolitan commuter transportation district shall be determined by multiplying the tax imposed under section one hundred eighty-six-a of this article by the ratio of the taxpayer's gross operating income from all sources within the metropolitan commuter transportation district to its gross operating income from all sources within the entire state.

4. The provisions concerning reports and returns under subdivision four of section one hundred eighty-six-a and subdivision six of section one hundred eighty-six-e of this article, as the case may be, shall be applicable to this section. An extension pursuant to section one hundred ninety-three of this article shall be allowed only if a taxpayer files with the commissioner an application for extension in such form and manner as said commissioner may prescribe by regulation and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax surcharge required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's report for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the report is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable to section one hundred eighty-six-a and section one hundred eighty-six-e of this article, as the case may be, are applicable to the tax surcharge imposed

by this section.

5. Notwithstanding any other provision of state or local law, the tax surcharge imposed by this section shall not be allowed as a deduction and shall, to the extent deductible in determining federal adjusted gross income, be added to federal adjusted gross income, in the computation of any tax imposed under this chapter or any other chapter of state or local law. Furthermore, the credits otherwise allowable under this article shall not be allowed against the tax surcharge imposed by this section.

6. The term metropolitan commuter transportation district as used in this section shall be defined pursuant to section twelve hundred sixty-two of the public authorities law.

§ 186-d. Transportation business tax on utility services in Erie county. 1. Notwithstanding any other provisions of law to the contrary, the county of Erie, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax such as is imposed by section one hundred eighty-six-a of this chapter, except that the rate thereof shall not be less than one-half of one per centum, and shall not exceed three-quarters of one per centum, of gross income or of gross operating income, as the case may be, and shall make provision for the collection thereof by the comptroller of such county. A tax imposed pursuant to this section shall apply to gross income or gross operating income, as the case may be, attributable to such county and shall be in addition to any and all other taxes.

2. Revenue resulting from the imposition of taxes authorized by this section heretofore or hereafter imposed shall be paid into the treasury of such county, and shall be credited to and deposited in a mass transportation operating assistance fund.

3. The county shall, not later than the fifteenth day following the termination of a calendar quarter for which tax revenue is received, or

at such other times as may be agreed by the county of Erie and the Niagara Frontier transportation authority, pay to the Niagara Frontier transportation authority a sum equal to the amount of the transportation business tax on utility services actually collected by said county less any amount actually refunded during such quarter, and less any reasonable costs incurred by said county in the administration and collection of the tax authorized by this section. Payments made from the mass transportation operating assistance fund to the Niagara Frontier transportation authority shall be used only for operations of mass transportation services provided by the Niagara Frontier transportation authority within the county of Erie. All such payments shall be made in accordance with the provisions of a contract between the county of Erie and the Niagara Frontier transportation authority.

4. All of the provisions of section one hundred eighty-six-a of this chapter, so far as the same are or can be made applicable, with such limitations as are set forth in this section, and such modifications as may be necessary in order to adapt such taxes to local conditions shall apply to the taxes authorized by this section.

5. Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within ninety days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in such proceeding.

6. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund

thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in such proceeding.

§ 186-e. Excise tax on telecommunication services. 1. Definitions. As used in this section, where not otherwise specifically defined and unless a different meaning is clearly required:

(a) (1) "Gross receipt" means the amount received in or by reason of any sale, conditional or otherwise, of telecommunication services or in or by reason of the furnishing of telecommunication services. Gross receipt from the sale of mobile telecommunications service provided by a home service provider shall include "charges for mobile telecommunications service" as described in paragraph one of subdivision (l) of section eleven hundred eleven of this chapter, regardless of where the mobile telecommunications service originates, terminates or passes through. Gross receipt is expressed in money, whether paid in cash, credit or property of any kind or nature, and shall be determined without any deduction therefrom on account of the cost of the service sold or the cost of materials, labor or services used or other costs, interest or discount paid, or any other expenses whatsoever except that there shall, however, be allowed a deduction for bad debts with respect to charges previously subjected to the tax hereunder when the debt has become worthless in accordance with generally accepted accounting principles consistently applied by the taxpayer. "Amount received" for the purpose of the definition of gross receipt, as the term gross receipt is used throughout this article, means the amount charged for the provision of a telecommunication service.

(2) (A) Any charge for a service or property billed by or for a mobile

telecommunications customer's home service provider shall be deemed to be provided by such mobile telecommunications customer's home service provider.

(B) Charges for mobile telecommunications service that are provided or deemed to be provided by a mobile telecommunications customer's home service provider shall be sourced to the taxing jurisdiction where the mobile telecommunications customer's place of primary use is located, regardless of where the mobile telecommunications service originates, terminates or passes through.

(b)(1) "Interexchange carrier" means any provider of telecommunication services between two or more exchanges that qualifies as a common carrier. Common carrier means any person engaged as a common carrier for hire in intrastate, interstate or foreign telecommunication services.

(2) "Local carrier" means any provider of telecommunication services for hire to the public, which is subject to the supervision of the public service commission and is engaged in providing carrier access service to a switched network. For the sole purpose of the application of the sale for resale exclusion under paragraph (b) of subdivision two of this section, a reference to an "interexchange carrier" or "local carrier" shall include a cellular common carrier which is a facilities-based cellular common carrier without regard to a determination of whether such carrier is providing local or interexchange service as such.

(c) "Person" means persons, corporations, companies, associations, joint-stock companies or associations, partnerships or limited liability companies, estates, assignee of rents, any person acting in a fiduciary capacity, or any other entity, and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or by any other means, except the state, municipalities, political and civil subdivisions of the state or municipality, public districts and corporations and associations organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) "Private telecommunication service" means a dedicated telecommunication service that entitles the user or users to the exclusive or priority use of a communications channel or group of

channels from one or more locations to one or more locations.

"Exclusive" as used herein means that the user-subscribers have use of a communications channel to the exclusion of all others who are not authorized to use such channel, and "priority" as used herein means that only authorized user-subscribers, as opposed to unauthorized persons, receive preferential use of a communications channel, but not necessarily a preference to the use of such channel with respect to each other.

(e) "Provider of telecommunication services" means any person who furnishes or sells telecommunications services regardless of whether such activities are the main business of such person or are only incidental thereto. Where a reference is made to a "utility" in this chapter in regard to the tax imposed by this section or by this section and section one hundred eighty-six-a of this article, such reference to "utility" shall be deemed to include a reference to a provider of telecommunication services.

(f) "Service address" means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received from the provider of telecommunication services. The foregoing rule is amplified, but not limited, by the following special provisions, which are listed in order of priority of application so that only the first applicable special provision will apply, if more than one potentially applies: (i) if the telecommunication originates or terminates in this state and the service is charged to telecommunication equipment which is not associated with the origination or termination of the telecommunication (for example, by the use of a calling card or third party billing) and the location of such equipment is in this state, the service address of the telecommunication will be deemed to be in this state; (ii) if the service is obtained through the use of a credit or payment mechanism such as a bank, travel, credit or debit card or if the service is obtained by charging telecommunication equipment which is not associated with the origination or termination of the telecommunication (for example, by the use of a calling card or third party billing) and the equipment is not located in the state of origination or termination, then the service address is deemed to be the location of the origination of the telecommunication; and (iii) if the service address is not a

defined location, as in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment as defined by telephone number, authorization code, or location in this state where bills are sent, provided, however, the location of the mobile telephone switching office or similar facility in this state that receives and transmits the signals of the telecommunication will be deemed the service address where the mobile telephone switching office or similar facility is outside the subscriber's assigned service area.

(g) "Telecommunication services" means telephony or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission of voice, image, data, information and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof and shall include services that are ancillary to the provision of telephone service (such as, but not limited to, dial tone, basic service, directory information, call forwarding, caller-identification, call-waiting and the like) and also include any equipment and services provided therewith. Provided, the definition of telecommunication services shall not apply to separately stated charges for any service which alters the substantive content of the message received by the recipient from that sent.

(h) For the purpose of applying the provisions of this section to mobile telecommunications service, the following terms when used in relation to mobile telecommunications service shall be defined as such terms are defined in section eleven hundred one of this chapter: "mobile telecommunications service," "mobile telecommunications customer," "home service provider," "licensed service area," "reseller," "serving carrier," "place of primary use" and "taxing jurisdiction".

2. Imposition. (a) (1) There is hereby imposed an excise tax on the sale of telecommunication services, except for the sale of mobile telecommunication services that are subject to tax under subparagraph two of this paragraph, by any person which is a provider of telecommunication services, to be paid by such person, at the rate of three and one-half percent prior to October first, nineteen hundred ninety-eight, three and one-quarter percent from October first, nineteen

hundred ninety-eight through December thirty-first, nineteen hundred ninety-nine, and two and one-half percent on and after January first, two thousand of gross receipt from: (i) any intrastate telecommunication services; (ii) any interstate and international telecommunication services (other than interstate and international private telecommunication services) which originate or terminate in this state and which telecommunication services are charged to a service address in this state, regardless of where the amounts charged for such services are billed or ultimately paid; and (iii) interstate and international private telecommunication services, the gross receipt to which the tax shall apply shall be determined as prescribed in subdivision three of this section.

(2) There is hereby imposed an excise tax on the sale of mobile telecommunication services, by any person which is a provider of telecommunication services, to be paid by such person, at the rate of two and nine-tenths percent on and after May first, two thousand fifteen of gross receipts from any mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within this state.

(b) (1) Sale for resale exclusion. There shall be excluded from the tax imposed by this section the sale of telecommunication services to a provider of telecommunication services where such services are purchased by such provider for resale as telecommunication services to its purchasers. (i) All gross receipts are deemed taxable to the provider of telecommunication services under this section, unless the provider, within ninety days after the provision of telecommunication services, has taken from the purchaser a certificate of resale in the form the commissioner has prescribed, to document that the telecommunication services were purchased for resale as telecommunication services. If the provider of telecommunication services obtains a properly completed certificate of resale from the purchaser within ninety days after the provision of telecommunication services, that certificate constitutes conclusive proof that the telecommunication services covered by the certificate were sold for resale as telecommunication services, the provider is relieved of liability for the tax due on the sale of those services, and the burden of proving that the gross receipt is not taxable is on the purchaser. Where a certificate of resale is received

within the time prescribed, but is deficient in some material manner, and that deficiency is later removed, the receipt of the certificate will be deemed to have satisfied all of the requirements of this clause. Where a certificate of resale is not received within ninety days after the provision of telecommunication services, the provider may, within sixty days after a request by the commissioner, either prove that the telecommunication services were sold for resale as telecommunication services, or obtain a fully completed certificate of exemption from the purchaser. A certificate of exemption obtained within this sixty day period constitutes evidence, but not conclusive proof, that the telecommunication services covered by the certificate were sold for resale as telecommunication services. The certificate of exemption will be administered in a manner consistent with subdivision (c) of section eleven hundred thirty-two of this chapter.

(ii) A certificate of resale is not properly completed if it does not include the purchaser's certificate of authority number issued pursuant to section eleven hundred thirty-four of this chapter, or if the purchaser's certificate of authority has expired or is invalid because it has been suspended or revoked as provided in section eleven hundred thirty-four of this chapter and the commissioner has furnished providers of telecommunication services registered under that section with information identifying those persons whose certificates of authority have expired or have been suspended or revoked.

(iii) The relief provided by this subparagraph does not apply to a provider of telecommunication services that fraudulently fails to pay tax or solicits a purchaser or purchasers to submit one or more unlawful certificates of exemption.

(iv) Any person who issues a false or fraudulent certificate of resale with intent to evade tax is, in addition to any other penalty imposed, subject to a penalty of one hundred percent of the tax that would have been due had there not been a misuse of that certificate, plus a penalty of fifty dollars for each false or fraudulent certificate.

(v) For any other sale of telecommunication services by a provider of telecommunication services to a purchaser who resells those services as telecommunication services but does not provide a properly completed certificate of resale to the provider of telecommunication services in accordance with the provisions of this subparagraph, the credit allowed

in subparagraph one of paragraph (a) of subdivision four of this section shall be allowed.

(2) Cable television service exclusion. The sale of cable television service shall in no event constitute a telecommunications service, and the receipts from the sale of such service are without the scope of the tax imposed by this section. The provision of such service shall mean the transmitting to subscribers of programs broadcast by one or more television or radio stations or any other programs originated by any person by means of wire, cable, microwave or any other means.

(3) Air safety and navigation exclusion. There shall be excluded from the tax imposed by this section, the sale of telecommunication services to air carriers solely for the purpose of air safety and navigation where such telecommunication service is provided by an organization, at least ninety percent of which (if a corporation, ninety percent of the voting stock of which) is owned, directly or indirectly, by air carriers, and which organization's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination or the foregoing) for the purposes of air safety and navigation.

(4) With respect to services or property described in subparagraph (B) of paragraph one of subdivision (1) of section eleven hundred eleven of this chapter and internet access service, a home service provider shall pay tax on the gross receipt from any charge that is aggregated with and not separately stated from other charges for mobile telecommunications service. Provided, however, if such home service provider uses an objective, reasonable and verifiable standard for identifying each of the components of the charge for mobile telecommunications service, then such home service provider may separately account for and quantify the amount of each such component charge. If a home service provider chooses to so separately account for and quantify and separately sells the subparagraph (B) property or service or internet access service, then the charge for such property or service shall be based upon the price for such property or service as separately sold. If a home service provider chooses to so separately account for and quantify and does not

separately sell such property or service, then the charge for such property or service shall be based upon the prevailing retail price of comparable property or service sold separately by other home service providers. In any case, the charge for such property or service shall be reasonable and proportionate to the total charge to the mobile telecommunications customer. Such charges for such subparagraph (B) services or property or internet access service, as the case may be, will not constitute gross receipts from charges for mobile telecommunications services. Nothing herein shall be construed to exempt from tax any service or property otherwise subject to tax under this section.

(c) Federal limitations. The tax imposed by this section shall not be made applicable to the sale of telecommunication services under circumstances which would preclude the application of such tax by reason of the United States constitution and the laws of the United States enacted pursuant thereto.

3. Apportionment for certain private telecommunication services. (a) General. With respect to interstate and international private telecommunication services, the gross receipt, if not separately ascertainable for each use of such service, shall be determined as follows: (1) one hundred percent of the charge imposed at each channel termination point within this state, (2) one hundred percent of the charge imposed for the use of a channel between channel termination points within this state, and (3)(i) if each segment between each termination point is separately billed and the amounts so billed are fairly reflective of New York origination and/or termination traffic, then one hundred percent of the charge imposed at each termination point in New York and for service in New York between those points and fifty percent of the charge imposed for service between a channel termination point outside the state and a point inside the state measured by the nearest termination point inside the state to first termination point outside the state relative to such point inside the state, or (ii) if each segment of the interstate or international circuit between each channel termination point is not separately billed or if such billing does not fairly reflect the New York origination and/or termination traffic handled by such private telecommunication service, an allocated

portion of the interstate and international channel charge with respect to points in New York and points outside the state based on the ratio which the number of channel termination points in this state bears to the total number of channel termination points within and without the state.

(b) Other allocation methods. Where the commissioner decides that, with respect to a certain provider of telecommunication services, the method prescribed in paragraph (a) of this subdivision does not fairly and equitably reflect the private telecommunication services attributable to this state, the commissioner shall prescribe methods of allocation which fairly and equitably reflect the private telecommunication services attributable to this state. Provided, further, that the commissioner may require that another allocation method be used so as to insure that the sum of the allocation factor of this state and the allocation factor of the other jurisdiction involved is not greater than one. In making this determination, the commissioner may take into account the reasonableness of the allocation prescribed by other states.

4. Credits against tax. (a) Allowance of credits. The following credits against the tax imposed under this section shall be allowed:

(1) Certain resold telecommunication services. A credit equal to the amount of tax imposed by this section, with respect to the sale of telecommunication services, shall be allowed to the purchaser where such purchaser is a provider of telecommunication services, and where the telecommunication service purchased are later resold by such purchaser as telecommunication services, and the exclusion in subparagraph one of paragraph (b) of subdivision two of this section is not allowed. To accomplish the purpose of the credit, it shall be determined as follows: the tax on the resold service shall be computed so that the tax under this section is imposed on the difference between the amount of the charge made by the provider to the purchaser and the amount of the charge made by the purchaser for the resold service.

(2) Tax paid in another jurisdiction. With respect to the tax on interstate or international telecommunication services imposed under this section, in order to prevent actual multijurisdictional taxation of a sale of telecommunication services which is the subject of taxation

under this section, any provider of telecommunication services or such provider's purchaser, upon proof that such provider or purchaser has actually paid a like tax to another state or country, or jurisdiction thereof on such telecommunication services, shall be allowed a credit against the tax imposed under this section. The amount of the credit shall be the amount of tax lawfully due and paid to such other state or country or jurisdiction, provided, however, the amount of the credit shall in no event exceed the tax due to this state.

(b) Refunds-overpayments of tax. In lieu of the credits set forth in paragraph (a) of this subdivision, the taxpayer may elect to take a refund. Amounts to be credited or refunded under this subdivision shall be considered overpayments of tax in accordance with the provisions of section one thousand eighty-six of this chapter; provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid on any credit or refund allowed under subparagraph one of paragraph (a) of this subdivision.

5. Record keeping. Every provider of telecommunication services subject to tax under this section shall keep such records of its business and in such form as the commissioner may require, and such records shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

6. Returns. Every provider of telecommunication services subject to tax under this section shall file, on or before March fifteenth of each year, for taxable years beginning before January first, two thousand sixteen, and on or before April fifteenth of each year, for taxable years beginning on or after January first, two thousand sixteen, a return for the year ended on the preceding December thirty-first, and pay the tax due, which return shall state the gross receipts for the period covered by each such return and the resale exclusions during such period. Returns shall be filed with the commissioner on a form to be furnished by the commissioner for such purpose and shall contain such other data, information or matter as the commissioner may require to be included therein. Notwithstanding the foregoing provisions of this

subdivision, the commissioner may require any provider of telecommunication services to file an annual return, which shall contain any data specified by the commissioner, regardless of whether such provider is subject to tax under this section. Every return shall have annexed thereto a certification by the head of the provider of telecommunication services making the same, or of the owner or of a partner or member thereof, or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that the statements contained therein are true.

7. (a) Applicability of article nine. If any provision of this section conflicts with any other provision contained in this article, the provision of this section shall control, but the provisions of this article which do not conflict with the provisions of this section shall apply with respect to the taxes under this section, so far as they are, or may be made applicable. The taxes and surcharges imposed by this section and sections one hundred eighty-four, one hundred eighty-four-a, one hundred eighty-six-a, one hundred eighty-six-c, and one hundred eighty-eight of this article may be jointly administered with respect to years ending in nineteen hundred ninety-five and thereafter, in the manner established by the commissioner.

(b) Applicability of Mobile Telecommunications Sourcing Act. The provisions of sections 119(c), 120, 121 and 122 of title 4 of the United States Code as enacted and in effect on July twenty-eighth, two thousand, to the extent relevant and to the extent required by preemption, shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of such sections of such title 4 of the United States Code had been incorporated in full into this section and had expressly referred to the tax under this section, with such modifications as may be necessary in order to adapt the language of such provisions to the tax imposed by this section.

8. Enhanced emergency telephone system surcharge fee and public safety communications surcharge. Notwithstanding any other provision contained in this chapter or any other law, any surcharge collected or any administrative fee retained by any provider of telecommunication

services acting as collection agent for a municipality pursuant to the provisions of article six of the county law or acting as a collection agent for the state pursuant to the provisions of section one hundred eighty-six-f of this article will not be considered as, nor included in the determination of gross receipts of the provider.

9. Distribution. Seven and six-tenths percent of the monies collected from the excise tax imposed by this section shall be distributed pursuant to subdivision three of section two hundred five of this chapter.

§ 186-f. Public safety communications surcharge. 1. Definitions. As used in this section, where not otherwise specifically defined and unless a different meaning is clearly required:

(a) "Place of primary use" has the same meaning as that term is defined in paragraph twenty-six of subdivision (b) of section eleven hundred one of this chapter.

(b) "Wireless communications customer" means mobile telecommunications customer as defined in subparagraph (i) of paragraph twenty-seven of subdivision (b) of section eleven hundred one of this chapter, who contracts for or is the end user of wireless communications service.

(c) "Wireless communications device" means any equipment used to access a wireless communications service.

(d) "Wireless communications service" means all commercial mobile services, as that term is defined in section 332(d) of title 47 of the United States Code, as amended from time to time, including, but not limited to, all broadband personal communications services, wireless radio telephone services, geographic area specialized and enhanced specialized mobile radio services, and incumbent-wide area specialized mobile radio licensees, which offer real time, two-way voice or data service that is interconnected with the public switched telephone network or otherwise provides access to emergency communications services.

(e) "Wireless communications service supplier" means a home service provider as defined in subparagraph (ii) of paragraph twenty-seven of subdivision (b) of section eleven hundred one of this chapter, provided

that the home service provider provides wireless communications service and has one or more wireless communications customers in New York state.

(f) "Prepaid wireless communications seller" means a person making a retail sale of prepaid wireless communications service.

(g) "Prepaid wireless communications service" means a prepaid mobile calling service as defined in paragraph twenty-two of subdivision (b) of section eleven hundred one of this chapter.

2. Public safety communications surcharge. (a) (1) A surcharge on wireless communications service provided to a wireless communications customer with a place of primary use in this state is imposed at the rate of one dollar and twenty cents per month on each wireless communications device in service during any part of each month. The surcharge must be reflected and made payable on bills rendered to the wireless communications customer for wireless communication service.

(2) A surcharge is imposed on the retail sale of each prepaid wireless communications service, whether or not any tangible personal property is sold therewith, at the rate of ninety cents per retail sale. A sale of a prepaid wireless communications service occurs in this state if the sale takes place at a seller's business location in the state. If the sale does not take place at the seller's place of business, it shall be conclusively determined to take place at the purchaser's shipping address or, if there is no item shipped, at the purchaser's billing address, or, if the seller does not have that address, at such address as approved by the commissioner that reasonably reflects the customer's location at the time of the sale of the prepaid wireless communications service.

(b) The surcharges must be reported and paid to the commissioner on a quarterly basis on or before the twentieth day of the month following each quarterly period ending on the last day of February, May, August and November, respectively. The payments must be accompanied by a return in the form and containing the information the commissioner may prescribe.

(c) The surcharges must be added as a separate line item to bills furnished by a wireless communications service supplier to its customers, or must be added as a separate line item to a sales slip, invoice, receipt, or other statement of the price, if any, that is

furnished by a prepaid wireless communications seller to a purchaser, and must be identified as the "public safety communications surcharge".

(d) Each wireless communications service supplier and prepaid wireless communications seller is entitled to retain, as an administrative fee, an amount equal to three percent of fifty-eight and three-tenths percent of the total collections of the surcharges imposed by this section, provided that the supplier or seller files any required return and remits the surcharge due to the commissioner on or before its due date.

3. Exemption. Lifeline consumers shall be exempt from the surcharges imposed by this section.

4. Applicable provisions. (a) Except as otherwise provided in this section, the surcharges imposed under this section shall be administered and collected by the commissioner in a like manner as the taxes imposed by article twenty-eight of this chapter. All the provisions of article twenty-eight of this chapter, including the provisions relating to definitions, exemptions, returns, personal liability for the tax, collection of tax from the customer, payment of tax, and the administration of the taxes imposed by such article, shall apply to the surcharges imposed under the authority of this section so far as those provisions can be made applicable to the surcharges imposed by this section, with such modifications as may be necessary in order to adapt the language of those provisions to the surcharges imposed by this section. Those provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section, except to the extent that any of those provisions is either inconsistent with a provision of this section or is not relevant to the surcharge imposed by this section. For purposes of this section, any reference in this chapter to a tax or the taxes imposed by article twenty-eight of this chapter shall be deemed also to refer to the surcharges imposed by this section unless a different meaning is clearly required.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision:

(1) the exemptions provided for in section eleven hundred sixteen of this chapter, other than the exemptions in paragraphs one, two and three

of subdivision (a) of that section, shall not apply to the surcharges imposed by this section.

(2) the credit provided in subdivision (f) of section eleven hundred thirty-seven of this chapter shall not apply to this section.

5. Deposits of surcharge monies collected and received.

Notwithstanding any provision of law to the contrary, all surcharge monies collected and received by the commissioner under this section must be deposited daily to the credit of the comptroller with those responsible banks, banking houses or trust companies the comptroller may designate. Those deposits must be kept separate and apart from all other monies in the possession of the comptroller. The comptroller must require adequate security from all such depositories. Of the total revenue collected or received under this section, the comptroller must retain in the comptroller's hands an amount determined by the commissioner to be necessary for refunds under this section, out of which the comptroller will pay any refunds to which taxpayers are entitled under the provisions of this section. The comptroller, after reserving the amount to pay refunds, must, on or before the tenth day of each month, pay all surcharge monies collected and received under this section and remaining to the comptroller's credit as follows:

(a) forty-one and seven-tenths of the revenues collected and received under this section into the state general fund; and

(b) after deducting the amount paid under paragraph (a) of this subdivision and the amount retained by wireless communications suppliers pursuant to paragraph (d) of subdivision two of this section, the balance of the revenues collected under this section into the statewide public safety communications account of the miscellaneous special revenue fund, created pursuant to section ninety-seven-qq of the state finance law.

6. Distribution. The monies collected from the surcharge imposed by this section must be distributed to include the following:

(a) The sum of twenty-five million five hundred thousand dollars must be allocated to the state police pursuant to appropriation by the legislature annually;

(b) The sum of one million five hundred thousand dollars must be

deposited into the New York state emergency services revolving loan fund annually; provided, however, that such sums shall not be deposited for any state fiscal year between two thousand eleven--two thousand twelve, and two thousand twenty-seven--two thousand twenty-eight;

(c) Up to the sum of seventy-five million dollars annually may be used for the provision of grants or reimbursements to counties for the development, consolidation, or operation of public safety communications systems or networks designed to support statewide interoperable communications for first responders, to be distributed pursuant to standards and guidelines issued by the state. Annual grants may consider costs borne by a municipality related to the issuance of local public safety communications bonds pursuant to section twenty-four hundred thirty-two of the public authorities law, when the municipality has qualified as an approved participant in a statewide interoperable communications system under the standards and guidelines issued by the state, and maintains compliance with such standards and guidelines. The grant amount will be prescribed pursuant to an agreement with the municipality, and may not exceed thirty percent of the annual cost borne by the municipality in relation to such bonds;

(d) To provide the costs of debt service for bonds and notes issued to finance expedited deployment funding pursuant to the provisions of section three hundred thirty-three of the county law and section sixteen hundred eighty-nine-h of the public authorities law; and

(e) services and expenses that support the operations and mission of the division of homeland security and emergency services as appropriated by the legislature.

(g) The sum of ten million dollars annually shall be used for the provision of grants to counties for costs related to the operations of public safety dispatch centers, to be distributed pursuant to a plan developed by the commissioner of homeland security and emergency services and approved by the director of the budget. Such plan may consider such factors as population density and emergency call volume.

§ 186-g. Wireless communications surcharge authorized. 1. Definitions. As used in this section, where not otherwise specifically defined and unless a different meaning is clearly required, all of the definitions

of section one hundred eighty-six-f of this article shall apply to the surcharges authorized by this section.

2. Imposition of surcharge. (a) Notwithstanding any other provision of law to the contrary, and in addition to any other tax or fee imposed by this chapter or any other law, a city having a population of a million or more, and a county, other than a county wholly within such a city, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing a surcharge within the territorial limits of such city or county to take effect on or after December first, two thousand seventeen that shall include both (i) wireless communications service, as described in paragraph (b) of this subdivision; and (ii) prepaid wireless communications service, as described in paragraph (c) of this subdivision.

* (b) Such surcharge on wireless communications service provided to a wireless communications customer with a place of primary use in a city or county authorized to impose the surcharge by this subdivision shall be imposed at the rate of thirty cents per month on each wireless communications device in service during any part of the month; provided, however, that the county of Broome may impose an additional surcharge at the rate of one dollar and ten cents per month; provided, however, that the county of Madison may impose an additional surcharge at the rate of sixty-five cents per month; provided however, that the county of Tioga may impose an additional surcharge at the rate of one dollar per month. The surcharge must be reflected and made payable on bills rendered to the wireless communications customer for wireless communications service.

* NB Effective until November 3, 2031

* (b) Such surcharge on wireless communications service provided to a wireless communications customer with a place of primary use in a city or county authorized to impose the surcharge by this subdivision shall be imposed at the rate of thirty cents per month on each wireless communications device in service during any part of the month; provided, however, that the county of Broome may impose an additional surcharge at the rate of one dollar and ten cents per month; provided, however, that the county of Madison may impose an additional surcharge at the rate of

sixty-five cents per month. The surcharge must be reflected and made payable on bills rendered to the wireless communications customer for wireless communications service.

* NB Effective November 3, 2031 until July 27, 2029

* (b) Such surcharge on wireless communications service provided to a wireless communications customer with a place of primary use in a city or county authorized to impose the surcharge by this subdivision shall be imposed at the rate of thirty cents per month on each wireless communications device in service during any part of the month; provided, however, that the county of Madison may impose an additional surcharge at the rate of sixty-five cents per month; provided, however, that the county of Tioga may impose an additional surcharge at the rate of one dollar per month. The surcharge must be reflected and made payable on bills rendered to the wireless communications customer for wireless communications service.

* NB Effective July 27, 2029 until December 20, 2029

* (b) Such surcharge on wireless communications service provided to a wireless communications customer with a place of primary use in a city or county authorized to impose the surcharge by this subdivision shall be imposed at the rate of thirty cents per month on each wireless communications device in service during any part of the month; provided, however, that the county of Tioga may impose an additional surcharge at the rate of one dollar per month. The surcharge must be reflected and made payable on bills rendered to the wireless communications customer for wireless communications service.

* NB Effective December 20, 2029

* (c) Such surcharge on the retail sale of each prepaid wireless communications service, whether or not any tangible personal property is sold therewith, shall be imposed at the rate of thirty cents per retail sale within a city or county authorized to impose the surcharge by this subdivision; provided, however, that the county of Broome may impose an additional surcharge at the rate of one dollar and ten cents per retail sale; provided, however, that the county of Madison may impose an additional surcharge at the rate of sixty-five cents per retail sale; provided, however, that the county of Tioga may impose an additional surcharge at the rate of one dollar per retail sale. A sale of a prepaid wireless communications service occurs in such city or county if the

sale takes place at a seller's business location in such city or county. If the sale does not take place at the seller's place of business, it shall be conclusively determined to take place at the purchaser's shipping address in such city or county or, if there is no item shipped, at the purchaser's billing address in such city or county, or, if the seller does not have that address, at such address that reasonably reflects the customer's location at the time of the sale of the prepaid wireless communications service.

* NB Effective until November 3, 2031

* (c) Such surcharge on the retail sale of each prepaid wireless communications service, whether or not any tangible personal property is sold therewith, shall be imposed at the rate of thirty cents per retail sale within a city or county authorized to impose the surcharge by this subdivision; provided, however, that the county of Broome may impose an additional surcharge at the rate of one dollar and ten cents per retail sale; provided, however, that the county of Madison may impose an additional surcharge at the rate of sixty-five cents per retail sale. A sale of a prepaid wireless communications service occurs in such city or county if the sale takes place at a seller's business location in such city or county. If the sale does not take place at the seller's place of business, it shall be conclusively determined to take place at the purchaser's shipping address in such city or county or, if there is no item shipped, at the purchaser's billing address in such city or county, or, if the seller does not have that address, at such address that reasonably reflects the customer's location at the time of the sale of the prepaid wireless communications service.

* NB Effective November 3, 2031 until July 27, 2029

* (c) Such surcharge on the retail sale of each prepaid wireless communications service, whether or not any tangible personal property is sold therewith, shall be imposed at the rate of thirty cents per retail sale within a city or county authorized to impose the surcharge by this subdivision; provided, however, that the county of Madison may impose an additional surcharge at the rate of sixty-five cents per retail sale; provided, however, that the county of Tioga may impose an additional surcharge at the rate of one dollar per retail sale. A sale of a prepaid wireless communications service occurs in such city or county if the sale takes place at a seller's business location in such city or county.

If the sale does not take place at the seller's place of business, it shall be conclusively determined to take place at the purchaser's shipping address in such city or county or, if there is no item shipped, at the purchaser's billing address in such city or county, or, if the seller does not have that address, at such address that reasonably reflects the customer's location at the time of the sale of the prepaid wireless communications service.

* NB Effective July 27, 2029 until December 20, 2029

* (c) Such surcharge on the retail sale of each prepaid wireless communications service, whether or not any tangible personal property is sold therewith, shall be imposed at the rate of thirty cents per retail sale within a city or county authorized to impose the surcharge by this subdivision; provided, however, that the county of Tioga may impose an additional surcharge at the rate of one dollar per retail sale. A sale of a prepaid wireless communications service occurs in such city or county if the sale takes place at a seller's business location in such city or county. If the sale does not take place at the seller's place of business, it shall be conclusively determined to take place at the purchaser's shipping address in such city or county or, if there is no item shipped, at the purchaser's billing address in such city or county, or, if the seller does not have that address, at such address that reasonably reflects the customer's location at the time of the sale of the prepaid wireless communications service.

* NB Effective December 20, 2029

* (d) In addition to the surcharge on wireless communications service authorized to be imposed under paragraph (b) of this subdivision and the surcharge on the retail sale of each prepaid wireless communications service authorized to be imposed under paragraph (c) of this subdivision, the county of Albany may impose an additional surcharge at the rate of: (i) ninety-five cents per month for surcharges authorized under paragraph (b) of this subdivision; and (ii) ninety-five cents per retail sale for surcharges authorized under paragraph (c) of this subdivision.

* NB Repealed June 30, 2032

3. Any such local law, ordinance or resolution adopted pursuant to this section shall state the amount of the surcharges and the date on

which both the wireless communications service supplier shall begin to add such surcharge to the billings of its customers and the prepaid wireless communications seller shall begin to collect such surcharge from its customers. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner in accordance with the provisions of subdivisions (d) and (e) of section twelve hundred ten of this chapter.

4. Exemption. Lifeline consumers shall be exempt from the surcharges imposed by this section.

5. The surcharges must be reported and paid to the commissioner on a quarterly basis on or before the twentieth day of the month following each quarterly period ending on the last day of February, May, August and November, respectively. The payments must be accompanied by a return in the form and containing the information the commissioner may prescribe.

6. The surcharges must be added as a separate line item to bills furnished by a wireless communications service supplier to its customers, or must be added as a separate line item to a sales slip, invoice, receipt, or other statement of the price, if any, that is furnished by a prepaid wireless communications seller to a purchaser, and must be identified as the "public safety communications surcharge".

7. Each wireless communications service supplier and prepaid wireless communications seller is entitled to retain, as an administrative fee, an amount equal to three percent of its collections of the surcharges imposed under the authority of this section, provided that the supplier or seller files any required return and remits the surcharge due to the commissioner on or before its due date.

8. Applicable provisions. (a) Except as otherwise provided in this section, any surcharge imposed under the authority of this section shall be administered and collected by the commissioner in a like manner as the taxes imposed by articles twenty-eight and twenty-nine of this

chapter. All the provisions of article twenty-eight and twenty-nine of this chapter, including the provisions relating to definitions, exemptions, returns, personal liability for the tax, collection of tax from the customer, payment of tax, and the administration of the taxes imposed by such article, shall apply to the surcharges imposed under the authority of this section so far as those provisions can be made applicable to the surcharges imposed under the authority of this section, with such modifications as may be necessary in order to adapt the language of those provisions to the surcharges imposed under the authority of this section. Those provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section, except to the extent that any of those provisions is either inconsistent with a provision of this section or is not relevant to the surcharge imposed under the authority of this section. For purposes of this section, any reference in this chapter to a tax or the taxes imposed by articles twenty-eight and twenty-nine of this chapter shall be deemed also to refer to the surcharges imposed under the authority of this section unless a different meaning is clearly required.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision:

(1) the exemptions provided for in section eleven hundred sixteen of this chapter, other than the exemptions in paragraphs one, two and three of subdivision (a) of that section, shall not apply to the surcharges imposed under the authority of this section;

(2) the credit provided in subdivision (f) of section eleven hundred thirty-seven of this chapter shall not apply to this section.

9. All surcharge monies remitted to the commissioner under this section shall be expended only upon authorization of the legislative body of a city or county that imposes the surcharges pursuant to the authority of subdivision two of this section, and only for payment of system costs, eligible wireless 911 service costs, or other costs associated with the administration, design, installation, construction, operation, or maintenance of public safety communications networks or a system to provide enhanced wireless 911 service serving such city or county, including, but not limited to, hardware, software, consultants,

financing and other acquisition costs. Such city or county shall separately account for and keep adequate books and records of the amount and object or purpose of all expenditures of all such monies. If, at the end of any fiscal year, the total amount of all such monies exceeds the amount necessary for payment of the above mentioned costs in such fiscal year, such excess shall be reserved and carried over for the payment of those costs in the following fiscal year.

§ 187. Credit for special additional mortgage recording tax. 1. A taxpayer shall be allowed a credit, to be credited against the taxes imposed by this article, other than the taxes and fees imposed by sections one hundred eighty-six-a and one hundred eighty-six-e of this chapter. The amount of the credit shall be the amount of the special additional mortgage recording tax paid by the taxpayer pursuant to the provisions of subdivision one-a of section two hundred fifty-three of this chapter on mortgages recorded on and after January first, nineteen hundred seventy-nine. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this chapter shall be the excess of the amount of such special additional mortgage recording tax paid over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this chapter. Provided further, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in one or more of the counties comprising the metropolitan commuter transportation district and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven. Provided further, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in the county of Erie and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven.

2. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or former section one hundred eighty-six. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 187-a. Credit for employment of persons with disabilities. 1.

Allowance of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the taxes imposed by this article, other than the taxes imposed by sections one hundred eighty-six-a, one hundred eighty-six-e and one hundred eighty-nine of this article, for employing within the state a qualified employee. Provided, however, the amount of credit allowed by this section against the tax imposed by section one hundred eighty-four of this article shall be the excess of the credit computed under this section over the amount of credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Qualified employee. A qualified employee is an individual:

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

(b) who has worked on a full-time basis for the employer who is claiming the credit for at least one hundred eighty days or four hundred hours.

3. Amount of credit. Except as provided in subdivision four of this section, the amount of credit under this section shall be thirty-five percent of the first six thousand dollars in qualified first-year wages earned by each qualified employee. "Qualified first-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employee, to services rendered during the one-year period beginning with the day the employee begins work for the taxpayer.

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

5. Carryover. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or former section one hundred eighty-six of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

6. Coordination with federal work opportunity tax credit. The provisions of sections fifty-one and fifty-two of the internal revenue code, as such sections applied on October first, nineteen hundred ninety-six, that apply to the work opportunity tax credit for vocational rehabilitation referrals shall apply to the credit under this section to the extent that such sections are consistent with the specific

provisions of this section, provided that in the event of a conflict the provisions of this section shall control.

§ 187-b. Alternative fuels and electric vehicle recharging property credit. 1. General. A taxpayer shall be allowed a credit, to be credited against the taxes imposed under sections one hundred eighty-three and one hundred eighty-four of this article. Such credit, to be computed as hereinafter provided, shall be allowed for alternative fuel vehicle refueling and electric vehicle recharging property placed in service during the taxable year. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the credit allowed by this section over the amount of such credit allowable against the tax imposed by section one hundred eighty-three of this article.

2. (a) Alternative fuel vehicle refueling property and electric vehicle recharging property. The credit under this section for alternative fuel vehicle refueling and electric vehicle recharging property shall equal for each installation of property the lesser of five thousand dollars or the product of fifty percent and the cost of any such property less any costs paid from the proceeds of grants.

(b) To qualify for the credit, the property must:

(i) be located in this state;

(ii) constitute alternative fuel vehicle refueling property or electric vehicle recharging property; and

(iii) not be paid for from the proceeds of grants awarded before January first, two thousand fifteen, including grants from the New York state energy research and development authority or the New York power authority.

3. Definitions. (a) The term "alternative fuel vehicle refueling property" means all of the equipment needed to dispense any fuel at least eighty-five percent of the volume of which consists of one or more of the following: natural gas, liquified natural gas, liquified petroleum, or hydrogen.

(b) The term "electric vehicle recharging property" means all the

equipment needed to convey electric power from the electric grid or another power source to an onboard vehicle energy storage system.

4. Carryovers. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

5. Credit recapture. If, at any time before the end of its recovery period, alternative fuel vehicle refueling or electric vehicle recharging property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(i) Cessation of qualification. Alternative fuel vehicle refueling property or electric vehicle recharging property ceases to be qualified if:

(I) the property no longer qualifies as alternative fuel vehicle refueling property or electric vehicle recharging property; or

(II) fifty percent or more of the use of the property in a taxable year is other than a trade or business in this state; or

(III) the taxpayer receiving the credit under this section sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in this subparagraph.

(ii) Recapture amount. The recapture amount is equal to the credit allowable under this section multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

6. Termination. The credit allowed by subdivision two of this section shall not apply in taxable years beginning after December thirty-first, two thousand twenty-eight.

§ 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section twenty-eight of this chapter, as added by part X of chapter sixty-two of the laws of two thousand six, against the tax imposed by this article. Provided, however, that the amount of such credit allowed against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of the credit allowed under this section for any taxable year reduces the tax to such amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

§ 187-d. Green building credit. 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section nineteen of this chapter, against the taxes imposed by sections one hundred eighty-three, one hundred eighty-four and former section one hundred eighty-six of this article. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Carryovers. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or former section one hundred eighty-six of this article. If, however, the amount of credit allowable under this section for any taxable year

reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 187-e. Credit for transportation improvement contributions. 1.

Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty of this chapter, against the taxes imposed by sections one hundred eighty-three, one hundred eighty-four and former section one hundred eighty-six of this article. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or former section one hundred eighty-six of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not thus deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

§ 187-f. Order of credits. Credits allowable under this article which cannot be carried over and which are not refundable shall be deducted first. Credits allowable under this article which can be carried over, and carryovers of such credits, shall be deducted next, and among such credits, those whose carryover is of limited duration shall be deducted

before those whose carryover is of unlimited duration. Credits allowable under this article which are refundable shall be deducted last.

§ 187-g. Brownfield redevelopment tax credit. 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-one of this chapter, against the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 187-h. Remediated brownfield credit for real property taxes for qualified sites. 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision (b) of section twenty-two of this chapter, against the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article. Provided, however, that the amount of such credit allowed against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowed under this section for any taxable year reduces the tax to such amount, any amount of credit not thus deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 187-i. Environmental remediation insurance credit. 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-three of this chapter, against the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

*** § 187-n. Security training tax credit.** 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB There are 2 § 187-n's

*** § 187-n. Fuel cell electric generating equipment expenditures credit.** (1) Allowance of credit. For taxable years beginning before January first, two thousand nine, a taxpayer whose business is not substantially engaged in the commercial generation, distribution, transmission, or servicing of energy or energy products shall be allowed a credit against the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article, equal to its qualified fuel cell electric generating equipment expenditures. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for herein shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

(2) Qualified fuel cell electric generating equipment expenditures.

(a) Qualified fuel cell electric generating equipment expenditures are

the costs, incurred on or after July first, two thousand five, associated with the purchase of on-site electricity generation units utilizing proton exchange membrane fuel cells, providing a rated baseload capacity of no less than one kilowatt of electricity and no more than one hundred kilowatts of electricity, which are located in this state at the time the qualified fuel cell electric generating equipment is placed in service.

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

(c) Such qualified expenditures shall not include interest or other finance charges.

(d) The amount of any federal, state or local grant received by the taxpayer, which was used for the purchase and/or installation of such equipment and which was not included in the federal gross income of the taxpayer, shall not be included in the amount of such qualified expenditures.

(3) Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

* NB There are 2 § 187-n's

§ 187-o. Temporary deferral nonrefundable payout credit. 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision one of section thirty-four of this chapter, against either the taxes imposed by sections one hundred eighty-three and one hundred eighty-four, or the tax imposed by section one hundred eighty-six-a of this article. However, the amount of such credit against the tax imposed by section one hundred eighty-four of this article shall

be the excess of the amount of that credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowed under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 187-p. Temporary deferral refundable payout credit. 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision two of section thirty-four of this chapter, against the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article, or the tax imposed by section one hundred eighty-six-a of this article. However, the amount of such credit against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of that credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowed under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided however, that no interest shall be paid thereon.

§ 187-q. Utility COVID-19 debt relief credit. 1. Allowance of credit.

A taxpayer doing business in this state that is subject to the supervision of the public service commission shall be allowed a credit against the taxes imposed by this article, to be computed as hereinafter provided, for the amount of debt that the taxpayer has waived in accordance with procedures established by the public service commission that was owed to the taxpayer by customers who received utility arrears assistance pursuant to the chapter of the laws of two thousand twenty-one that enacted this section. Provided, however, that if the taxpayer is subject to tax under both sections one hundred eighty-three and one hundred eighty-four of this article the amount of such credit allowable against the tax imposed by such section one hundred eighty-four shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount that will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

3. Certification. No amount of waived customer debt may be the basis for the credit herein unless such amount is certified by the public service commission as provided herein. After consulting with the commissioner, the public service commission shall establish procedures for determining the amount of waived customer debt that may be used as a basis for the tax credit allowed by this section. Such procedures shall include provisions describing the application process, application due dates, the documentation that will be provided by taxpayers to substantiate the amount of customer debt that was waived by such taxpayers, the process by which the public service commission shall

certify to a taxpayer and to the commissioner the amount of waived customer debt that qualifies for the credit, and such other provisions as deemed necessary and appropriate.

4. Timing of credit. The credit allowed by this section shall be claimed in the taxable year in which the public service commission certifies the amount of customer debt waived by the taxpayer that qualifies for the credit allowed by this section.

5. Credit recapture. If the certification made by the public service commission under subdivision three of this section is revoked by the public service commission, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to the tax in the taxable year in which such revocation becomes final.

6. Information sharing. Notwithstanding any provision of this chapter, employees and officers of the public service commission and the department shall be allowed and are directed to share and exchange information regarding the credits allowed, or claimed, pursuant to this section, and the taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department, and the information of the taxpayer used by the department of public service to determine the amount of waived customer debt.

§ 187-r. Commercial security tax credit. 1. Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-nine of this chapter, against the tax imposed by this article.

2. Application of credit. In no event shall the credit under this section be allowed in an amount that will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to

such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 188. Tax surcharge. 1. In addition to the taxes imposed under sections one hundred eighty-three, one hundred eighty-four, one hundred eighty-six and one hundred eighty-six-a of this article, there is hereby imposed, for years ending on December thirty-first, nineteen hundred ninety, nineteen hundred ninety-one, nineteen hundred ninety-two, nineteen hundred ninety-three, nineteen hundred ninety-four, nineteen hundred ninety-five and nineteen hundred ninety-six, and, in addition to the tax imposed under section one hundred eighty-six-e of this article, there is hereby imposed, for years ending on December thirty-first, nineteen hundred ninety-five and nineteen hundred ninety-six, a tax surcharge at the rate of fifteen percent in the case of years ending on December thirty-first, nineteen hundred ninety, nineteen hundred ninety-one, nineteen hundred ninety-two and nineteen hundred ninety-three, and until such rate is superseded; at the rate of ten percent in the case of years ending on December thirty-first, nineteen hundred ninety-four, and until such rate is superseded; at the rate of five percent in the case of years ending on December thirty-first, nineteen hundred ninety-five, and until such rate is superseded; and at the rate of zero percent in the case of years ending on December thirty-first, nineteen hundred ninety-six, of the tax imposed under sections one hundred eighty-three, one hundred eighty-four, one hundred eighty-six, one hundred eighty-six-a and one hundred eighty-six-e of this article, after deduction of any credits against tax otherwise allowable under this article. However, the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than eighty-four months (or twenty-four months, in the case of the tax imposed under section one hundred eighty-six-e). The credits against tax otherwise allowable under this article shall not be allowed against the tax surcharge imposed by this section. Provided that, with respect to the

year ending on December thirty-first, nineteen hundred ninety-one, the foregoing tax surcharge imposed under this section with respect to such section one hundred eighty-six-a of this article shall be computed based upon the tax liability under such section for such period undiminished by the application of any utility credit under article thirteen-A of this chapter. Provided, further, that in addition to the aforesaid tax surcharge imposed with respect to such section one hundred eighty-six-a of this article for the year ending on December thirty-one, nineteen hundred ninety-one, for such year there is also hereby imposed an amount in addition to such surcharge; such additional amount shall be equal to fifteen percent of the total amount of the utility credit under article thirteen-A of this chapter which was applied against tax liability under such section one hundred eighty-six-a of this article for the tax year ending December thirty-first, nineteen hundred ninety.

1-a. Insofar as subdivision one of this section establishes a rate of fifteen percent in the case of years ending on December thirty-first, nineteen hundred ninety-three and until such rate is superseded, a rate of ten percent in the case of years ending on December thirty-first, nineteen hundred ninety-four and until such rate is superseded, a rate of five percent in the case of years ending on December thirty-first, nineteen hundred ninety-five and until such rate is superseded, and a rate of zero percent in the case of years ending on December thirty-first, nineteen hundred ninety-six, the transition from such rate of fifteen percent to such rate of ten percent, from such rate of ten percent to such rate of five percent, and from such rate of five percent to such rate of zero percent, shall be deemed to occur, respectively, on the first day of the seventh month of each of such years ending on December thirty-first, nineteen hundred ninety-four, nineteen hundred ninety-five and nineteen hundred ninety-six, with the result that for purposes of implementation of such changes in rates, and notwithstanding such subdivision one, there is hereby imposed with respect to all years ending on December thirty-first, nineteen hundred ninety-four, including years of fewer than twelve months, a tax surcharge at the rate of twelve and one-half percent; there is hereby imposed with respect to all years ending on December thirty-first, nineteen hundred ninety-five, including years of fewer than twelve months, a tax surcharge at the rate of seven

and one-half percent; and there is hereby imposed with respect to all years ending on December thirty-first, nineteen hundred ninety-six, including years of fewer than twelve months, a tax surcharge at the rate of two and one-half percent.

2. The provisions concerning reports under sections one hundred eighty-six-a, one hundred eighty-six-e and one hundred ninety-two of this article shall be applicable to this section, except that the report covering the tax surcharge computed on the tax imposed under section one hundred eighty-three of this article shall be filed on or before the date one year after the date on which the report of such tax is required to be filed. An extension pursuant to section one hundred ninety-three shall be allowed, for taxable years to which the tax surcharge imposed by this section applies, only if a taxpayer files with the commissioner an application for extension in such form as said commissioner may prescribe, and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the tax surcharge required to be paid under this section for the applicable period or not less than the tax surcharge shown on the taxpayer's report for the preceding period, if such preceding period consisted of twelve months, or in the case of the tax surcharge for the year ending December thirty-first, nineteen hundred ninety, fifteen percent of the tax after the deduction of credits, shown on the taxpayer's report for the year ending December thirty-first, nineteen hundred eighty-nine if such year consisted of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed.

3. Except as otherwise provided in this section, all of the provisions of this article, except for sections one hundred eighty-three-a, one hundred eighty-four-a, one hundred eighty-six-b, one hundred eighty-six-c and two hundred five, shall apply to the tax surcharge imposed by this section with such modifications as may be necessary to adapt such language to the tax surcharge imposed by this section. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of

this section or not relevant to the tax surcharge imposed by this section, and to that end a reference in this article to the tax imposed by section one hundred eighty-three, one hundred eighty-four, one hundred eighty-six, one hundred eighty-six-a or one hundred eighty-six-e of this article shall be read as a reference to the tax surcharge imposed by this section, and to the sum of such tax and such tax surcharge in the case of sections one hundred ninety-seven-a and one hundred ninety-seven-b of this article and such other provisions requiring such reading in order to effectuate the purposes of this provision, unless a different meaning is clearly required.

4. The amount of tax surcharge imposed pursuant to this section shall not be included in any calculation of a tax surcharge imposed pursuant to section one hundred eighty-three-a, one hundred eighty-four-a, one hundred eighty-six-b or one hundred eighty-six-c of this article.

§ 189-b. Tax surcharge. 1. In addition to the tax imposed under section one hundred eighty-nine of this article, there is hereby imposed a tax surcharge at the rate of fifteen percent, for taxable months beginning on or after August first, nineteen hundred ninety-one and ending on or before December thirty-first, nineteen hundred ninety-three; at the rate of ten percent, for taxable months beginning on or after January first, nineteen hundred ninety-four and ending on or before May thirty-first, nineteen hundred ninety-five; at the rate of seven and one-half percent, for taxable months beginning on or after June first, nineteen hundred ninety-five and ending on or before May thirty-first, nineteen hundred ninety-six; and at the rate of two and one-half percent, for taxable months beginning on or after June first, nineteen hundred ninety-six and ending on or before May thirty-first, nineteen hundred ninety-seven, of the tax imposed under section one hundred eighty-nine of this article.

2. The provisions concerning reports, payment and collection of tax in subdivision three of section one hundred eighty-nine of this article shall be applicable to this section. All of the provisions of this article presently applicable to section one hundred eighty-nine of this

article are applicable to the tax surcharge imposed by this section.

3. The amount of tax surcharge imposed pursuant to this section shall not be included in any calculation of a tax surcharge imposed pursuant to section one hundred eighty-nine-a of this article.

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

2. Computation. The credit allowed by this section shall first be deducted from the taxes imposed by section one hundred eighty-three or former section one hundred eighty-six of this article. The amount of any such credit remaining shall next be deducted from the taxes imposed by section one hundred eighty-four of this article.

3. Carryover. In no event shall the amount of credit allowed under this section reduce the tax payable to less than the minimum tax fixed by section one hundred eighty-three or former section one hundred eighty-six of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 191. Receivers, etc., conducting corporate business. Any receiver, liquidator, referee, trustee, assignee, or other fiduciary or officer or agent appointed by any court, who conducts the business of any corporation, limited liability company, joint stock company or association shall be subject to the tax imposed by this article in the

same manner and to the same extent as if the business were conducted by the agents or officers of such corporation, limited liability company, joint stock company or association. A dissolved corporation, limited liability company, joint stock company or association which continues to conduct business shall also be subject to the tax imposed by this article.

§ 192. Reports of corporations. Corporations liable to pay a tax under this article shall report as follows:

1. Corporations paying franchise tax. Every corporation, association or joint-stock company liable to pay a tax under section one hundred eighty-three of this chapter shall, on or before March fifteenth in each year, for taxable years beginning before January first, two thousand seventeen, and on or before April fifteenth in each year, for taxable years beginning on or after January first, two thousand seventeen, make a written report to the commissioner of its condition at the close of its business on the preceding December thirty-first, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend paid by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this state during such year.

2. Transportation and transmission corporations. Every transportation or transmission corporation, joint-stock company or association liable to pay an additional franchise tax under section one hundred eighty-four of this chapter, shall also, on or before March fifteenth of each year, make a written report to the commissioner of the amount of its gross earnings subject to the tax imposed by said section for the year ended on the preceding December thirty-first, for taxable years beginning before January first, two thousand sixteen, except that the year ended on December thirty-first, nineteen hundred seventy-six shall be deemed, for the purposes of this subdivision, to have commenced on July first, nineteen hundred seventy-six, and shall also, on or before April fifteenth of each year, make a written report to the commissioner of the amount of its gross earnings subject to the tax imposed by said section

for the year ended on the preceding December thirty-first, for taxable years beginning on or after January first, two thousand sixteen. Any such corporation, joint-stock company or association which ceases to be subject to the tax imposed by section one hundred eighty-four of this chapter by reason of a liquidation, dissolution, merger or consolidation with any other corporation, or any other cause, shall, on the date of such cessation or at such other time as the commissioner may require, make a written report to the commissioner of the amount of its gross earnings subject to the tax imposed by section one hundred eighty-four of this chapter for any period for which no report was theretofore filed. Any corporation, joint-stock company or association subject to a tax upon dividends under said section one hundred eighty-four of this chapter shall also include in its report under this subdivision required to be filed a statement of the authorized capital of the company, the amount of capital stock issued, and the amount of dividends of every nature paid during the year ended on the preceding December thirty-first. As to tax payers subject to such tax upon dividends under said section one hundred eighty-four of this chapter, the year ended on December thirty-first, nineteen hundred seventy-six shall be deemed, for the purposes of this subdivision, to have commenced on July first, nineteen hundred seventy-six.

4. Insurance corporations. (a) Except as hereinafter provided in paragraph (b), every insurance corporation liable to pay a tax under section one hundred eighty-seven of this chapter shall, on or before March first, June first, September first and December first in each year, make a written report to the tax commission and to the superintendent of financial services covering the quarter year ending on the last day of the third month preceding that in which the report is required to be filed, in such form and containing such information as the tax commission may deem necessary for the determination of the tax due for each such quarter year. There shall also be filed with the tax commission and with the superintendent of financial services, on or before March fifteenth of each year, a statement which will reconcile the net taxable premiums shown in the quarterly reports, made pursuant to this section, for the preceding calendar year, with the total gross and net premiums shown in the annual statement of the insurance

corporation filed with said superintendent of financial services for such year pursuant to section three hundred seven of the insurance law.

(b) Every insurance corporation liable to pay a tax under subdivisions six and eight of section one hundred eighty-seven of this chapter shall, on or before the fifteenth day of March, make and file a written report with the tax commission and with the superintendent of financial services, covering the preceding calendar year, in such form and containing such information as the tax commission may deem necessary for the determination of the tax imposed by said subdivisions, and such calendar year shall be deemed the taxable year within the meaning of this section and of said subdivisions, provided, however that insurance corporations liable to pay tax under subdivision eight of section one hundred eighty-seven shall be required to make the reports required herein only on the fifteenth day of March in the years nineteen hundred sixty-five through and including nineteen hundred seventy-six.

5. Notwithstanding the provisions of section two hundred two of this article, the commissioner shall provide the statements and other required information requested on tax reports under section four hundred eight of the business corporation law to the secretary of state for filing. Such provision may also include a copy or image of that portion of the report solely pertinent to such information to the extent feasible. The commissioner may also provide information on noncompliance.

§ 193. Extension of time for filing report. The tax commission may for good cause shown extend the time within which any corporation is required to report by this article.

§ 194. Further requirements as to reports of corporations. Every report required by this article shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, or chief accounting officer or any other officer of the corporation, association or joint-stock company duly authorized so to act, or of the person or one of the persons, or the members of the

partnership making the same, to the effect that the statements contained therein are true. In the case of an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments, such certification shall be made by any person duly authorized so to act on behalf of such association, publicly traded partnership, limited liability company or business. The fact that an individual's name is signed on a certification attached to a report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the taxpayer. Such reports shall contain any other data, information or matter which the commissioner may require to be included therein, and it may prescribe the form in which such reports shall be made. When so prescribed such forms shall be used in making the report. The commissioner may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the commissioner may specify. Reports shall be preserved for five years, and thereafter until the commissioner orders them to be destroyed.

§ 197. Payment of tax and penalties. 1. To the extent the taxes and fees imposed by this article shall not have been previously paid,

(a) such taxes and fees, or the balance thereof, shall be payable to the tax commission in full at the time the taxpayer's report is required to be filed, and

(b) such taxes and fees, or the balance thereof, imposed on any taxpayer which ceased to exercise its franchise or to be subject to any of the taxes or fees imposed by this article shall be payable to the tax commission at the time the report is required to be filed, provided any such tax or fee of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other taxes and fees of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable

subsequent to the time such report is required to be filed, shall nevertheless be payable at such time.

2. Where an application for consent to dissolution, as provided by section one thousand four of the business corporation law, is filed with the commissioner of taxation and finance, such consent shall be given only if the commissioner of taxation and finance ascertains that all fees and taxes imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, as well as penalties and interest charges related thereto, accrued against the corporation have been paid, and where such application for consent to dissolution is filed with such commissioner prior to the commencement of any tax year or period, by a corporation subject to tax under articles nine or nine-a of this chapter, such corporation shall not be liable for any tax imposed by said articles for such following year or period (except as may be otherwise provided in section one hundred ninety-one, subdivision nine of section one hundred eighty-two, subdivision nine of section one hundred eighty-two-a, subdivision nine of section one hundred eighty-two-b and subdivision three of section two hundred nine of this chapter), provided that the certificate of dissolution for such corporation is duly filed in the office of the secretary of state within ninety days after the commencement of such tax year or period and such corporation does not conduct business in such tax year or period.

3. Notwithstanding any other provision of this article, the tax commission may grant a reasonable extension of time for payment of any tax or fee imposed by this article under such conditions as it deems just and proper.

§ 197-a. Declaration of estimated tax. 1. Every taxpayer subject to the taxes imposed under sections one hundred eighty-two, one hundred eighty-two-a, former section one hundred eighty-two-b, one hundred eighty-four, one hundred eighty-six-a or one hundred eighty-six-e of this article shall make a declaration of its estimated tax for the current taxable year, containing such information as the commissioner may prescribe by regulations or instructions, if such estimated tax can

reasonably be expected to exceed one thousand dollars. If a taxpayer is subject to the tax surcharge imposed under section one hundred eighty-four-a or one hundred eighty-six-c of this article and such taxpayer's estimated tax under section one hundred eighty-four or one hundred eighty-six-a of this article, respectively, can reasonably be expected to exceed one thousand dollars, such taxpayer shall also make a declaration of its estimated tax surcharge for the current taxable year.

2. The terms "estimated tax" and "estimated tax surcharge" mean the amounts which the taxpayer estimates to be the taxes or tax surcharges, respectively, imposed by the sections enumerated in subdivision one hereof for the current taxable year, less the sum of any credits which it estimates to be allowable against such taxes or tax surcharges, respectively.

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

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

(b) after August thirty-first and before December first of such current taxable year, the declaration shall be filed on or before December fifteenth.

4. A taxpayer may amend a declaration of estimated tax or a declaration of estimated tax surcharge under regulations prescribed by the commissioner of taxation and finance.

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

(a) such return shall be considered as its declaration if no

declaration was required to be filed during the taxable year for which the tax or tax surcharge was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to paragraph (b) of subdivision three of this section, and

(b) such return shall be considered as the amendment permitted by subdivision four of this section to be filed on or before December fifteenth if the tax or tax surcharge shown on the return is greater than the estimated tax or estimated tax surcharge, as the case may be, shown on a declaration previously made.

6. If the taxable period for which a tax or tax surcharge is imposed under any of the sections enumerated in subdivision one hereof is other than twelve months, every taxpayer required to make a declaration of estimated tax or a declaration of estimated tax surcharge for such taxable period shall make such declaration in accordance with rules of the commissioner.

7. This section shall apply to taxable periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

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

§ 197-b. Payments of estimated tax. 1. (a) For taxable years beginning on or after January first, nineteen hundred seventy-seven, every taxpayer subject to tax under section one hundred eighty-four, one hundred eighty-six-a or one hundred eighty-six-e of this article, must pay in each year an amount equal to (i) twenty-five percent of the tax imposed under each of such sections for the second preceding taxable year if the second preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) forty percent of the tax imposed under any of these sections for the second preceding taxable year if the second preceding year's tax exceeded one hundred thousand dollars. If the second preceding year's

tax under section one hundred eighty-four, one hundred eighty-six-a or one hundred eighty-six-e of this article exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section one hundred eighty-four-a or one hundred eighty-six-c of this article, respectively, the taxpayer must also pay in each such year an amount equal to (i) twenty-five percent of the tax surcharge imposed under such section for the second preceding taxable year if the second preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) forty percent of the tax surcharge imposed under that section for the second preceding taxable year if the second preceding year's tax exceeded one hundred thousand dollars. The amount or amounts must be paid with the return or report required to be filed with respect to the tax or tax surcharge for the preceding taxable year or with an application for extension of the time for filing the return or report, for taxable years beginning before January first, two thousand sixteen. The amount or amounts that must be paid with respect to the tax or tax surcharge for the second preceding year must be paid on or before the fifteenth day of the third month following the close of the taxable year, for taxable years beginning on or after January first, two thousand sixteen.

(b) Notwithstanding any other provision of this article to the contrary, any taxpayer required under this subdivision to pay an amount equal to twenty-five percent of its tax for the taxable year ending on December thirty-first, nineteen hundred seventy-six shall compute such amount as if its tax for such taxable year were determined on the basis of its gross earnings, dividends paid, gross income or gross operating income, as the case may be, for either the preceding twelve months ending on such date or for the period from the date of its incorporation under the laws of this state or the date it commenced carrying on or doing business in New York to and including December thirty-first, nineteen hundred seventy-six, if such date of incorporation or commencement of the carrying on or doing business was within the twelve months immediately preceding December thirty-first, nineteen hundred seventy-six.

2. The estimated tax or estimated tax surcharge for each taxable year with respect to which a declaration of estimated tax or a declaration of

estimated tax surcharge, respectively, is required to be filed under this article shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

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

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

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

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

3. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax or

estimated tax surcharge by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax or estimated tax surcharge by reason thereof shall be paid at the time of making such amendment.

4. Any amount paid pursuant to subdivision one shall be applied as a first installment against the estimated tax or estimated tax surcharge, respectively, of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section one hundred ninety-seven-a of this chapter, or if no declaration is filed pursuant to such section, any such amount shall be considered a payment on account of the tax or tax surcharge shown on the return or report required to be filed by the taxpayer for such taxable year.

5. Notwithstanding the provisions of section one thousand eighty-eight of this chapter or section sixteen of the state finance law, if an amount paid pursuant to subdivision one of this section exceeds the tax or tax surcharge, respectively, shown on the return or report required to be filed by the taxpayer for the taxable year during which such amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to subdivision one exceeds such tax or tax surcharge, at the overpayment rate set by the commissioner of taxation and finance pursuant to subdivision (e) of section one thousand ninety-six or, if no rate is set, at the rate of six percent per annum, from the date of payment of the amount so paid pursuant to such subdivision one to the fifteenth day of the third month following the close of the taxable year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar.

6. As used in this section, "the second preceding year's tax" means the tax imposed upon the taxpayer by section one hundred eighty-four, one hundred eighty-six-a or one hundred eighty-six-e of this article for the second preceding taxable year.

7. This section shall apply to a taxable period of less than twelve months in accordance with regulations of the tax commission.

8. The commissioner of taxation and finance may grant a reasonable extension of time, not to exceed six months, for the payment of any installment of estimated tax or estimated tax surcharge required pursuant to this section, on such terms and conditions as he may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided, however, that interest at the underpayment rate set by the commissioner pursuant to subdivision (e) of section one thousand ninety-six or, if no rate is set, at the rate of six percent per annum for the period of the extension, shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

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

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

11. Any amount paid pursuant to paragraph four of subsection (c) of section six hundred fifty-eight of this chapter on behalf of a taxpayer subject to tax under this article shall be applied against the estimated tax of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section one hundred ninety-seven-a of this article, or if no declaration is filed pursuant to such section, any such amount shall be considered a payment on account of the tax shown on the report required to be filed by the taxpayer for such taxable year.

§ 197-c. Applicability of section one hundred eighty-two-a.

Notwithstanding any other provision of law to the contrary, with respect to the tax imposed by section one hundred eighty-two-a of this article,

a declaration of estimated tax of a taxpayer with a taxable year which is the calendar year nineteen hundred eighty-one, shall be filed on or before September fifteen of such year and the estimated tax with respect to which such declaration is required to be filed, shall be paid in two equal installments as follows: on September fifteenth and December fifteenth of such year. The provisions of this section shall apply to a taxpayer subject to the tax imposed by such section one hundred eighty-two-a with a taxabl period of twelve months, other than a calendar year, which period commences in nineteen hundred eighty-one by the substitution of the months of such fiscal year for the corresponding months specified in this provision for a taxpayer with a taxable year which is the calendar year nineteen hundred eighty-one. If the taxable period for which the tax imposed by such section one hundred eighty-two-a is other than twelve months, every taxpayer required to make a declaration of estimated tax and payments of estimated tax pursuant to the provisions of this section shall make such declaration and such payments in accordance with regulations of the tax commission.

§ 197-d. The provisions of article twenty-seven of this chapter which pertain to declarations and payments of estimated taxes shall be applicable to declarations and payments of estimated tax required under this article as if this article had been specifically incorporated in and referred to in such provisions.

§ 202. Secrecy required of officials; penalty for violation. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any tax commissioner, any officer or employee of the department of taxation and finance, or any person who, pursuant to this section, is permitted to inspect any report, or to whom any information contained in any report is furnished, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a report filed pursuant to this article, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report under this article. The officers charged with the custody of

such reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state or the commissioner of taxation and finance in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner of taxation and finance is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the reports or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The commissioner of taxation and finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after the formal hearing provided for in section one thousand eighty-nine of this chapter. Nothing herein shall be construed to prohibit the delivery to a corporation or its duly authorized representative of a copy of any report filed by it, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by section one hundred ninety-seven together with any relevant information which in the opinion of the commissioner of taxation and finance may assist in the collection of such delinquent taxes; or the inspection by the attorney-general or other legal representatives of the state of the report of any corporation which shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or the attorney-general or has been instituted; or the inspection of the reports of any corporation by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by such corporation under this article; or the disclosing to a state agency, pursuant to section one hundred seventy-one-f of this chapter, of the name and taxpayer identification number of any taxpayer whose overpayment is certified to the comptroller to be credited against a

past-due legally enforceable debt owed to such state agency and the amount of the overpayment and interest thereon certified to the comptroller to be credited against a past-due legally enforceable debt; or the disclosing to the commissioner of finance of the city of New York, pursuant to section one hundred seventy-one-l of this chapter, of the name and taxpayer identification number of any taxpayer whose overpayment is certified to the comptroller to be credited against a city of New York tax warrant judgment debt. Provided, further, nothing herein shall be construed to prohibit the disclosure of the names of corporations subject to tax under section one hundred eighty-two or one hundred eighty-two-a of this article, or to any two or all of such taxes, for purposes of assisting corporations subject to such tax or taxes in determining whether a gross receipt or a gross receipt from sales of petroleum is an excludible gross receipt or excludible gross receipt from sales of petroleum because it is derived from a sale for resale.

2. (a) Any officer or employee of the state who willfully violates the provisions of subdivision one of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

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

3. Notwithstanding any provisions of this section, the tax commission may permit the secretary of the treasury of the United States or his delegates, or the proper officer of any other state charged with tax administration, or the authorized representative of either such officer, to inspect the reports filed under this article, or may furnish to such officer or his authorized representative an abstract of any such report or supply information concerning an item contained in any such report, or disclosed by an investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information

is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the secretary of the treasury of the United States or his delegates such reports filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury or his delegates provided the laws of the United States grant substantially similar powers to the secretary of the treasury or his delegates. Where the commissioner of taxation and finance has so authorized use of reports or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such reports or other tax information.

4. Notwithstanding any provisions of this section, the tax commission may furnish any municipality with such information contained in the franchise tax reports filed under this article as it may consider proper for use in any certiorari or condemnation proceedings, and may furnish any authorized officer or employee of the department of financial services of the state of New York with any information contained in the franchise tax reports of corporations liable to pay a tax under section one hundred eighty-seven of this chapter, provided such information is to be used for tax purposes only.

5. Notwithstanding the provisions of subdivision one of this section, the tax commission, in its discretion, may require or permit any or all persons liable for any fee or tax imposed by this article, to make payment of any fee, tax, penalty or interest imposed by this article to banks, banking houses or trust companies designated by the tax commission and to file reports with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section two hundred six.

6. (a) Notwithstanding the provisions of subdivision one of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year reports specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any report, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such report, and any social security numbers, account numbers and residential address information.

(b) No reports shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such reports have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal reports or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested reports are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with the federal law as informed by requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 203. Collection of taxes. 1. An action may be brought by the attorney-general, at the instance of the tax commission, in the name of the state, to compel the filing of reports or to recover the amount of any account audited and stated by the tax commission under this article or to recover the amount of any taxes, fees, penalties and interest due pursuant to this article. If any such account or any tax shall remain unpaid or such report be not filed, and the tax-commission is satisfied that the failure to pay or file the report is intentional, it may so report to the attorney-general, who shall immediately bring an action, in the name of the people of the state, for the forfeiture of the franchise of any such delinquent corporation, joint-stock company or association failing to make such payments, or file such reports, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and for its dissolution, and thereafter such franchise shall be annulled and if the delinquent is a foreign corporation its authority to do business in this state shall be revoked.

2. Every foreign corporation (other than a moneyed corporation) subject to the provisions of this article, except a corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the

department of state a certificate of designation in its corporate name, signed and acknowledged by its president or a vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this article may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon him. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon him to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon him to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this article, may be made by either (1) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (2) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to, and leaving such

copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

§ 203-a. Dissolution of delinquent business corporations. 1. On or before the last day of March, June, September or December in each calendar year, the tax commission may certify and transmit to the department of state a list containing the names of any or all such stock corporations and corporations formed for profit, other than corporations formed by or under special acts and other than banking, insurance and railroad corporations, as have not filed reports required under this article during the period of two consecutive years next preceding the date of such certification or as have been delinquent in the payment of taxes for any two years duly assessed pursuant to this article.

2. If the secretary of state, upon comparing the names so certified with his records, shall discover error, he may return the list to the tax commission for correction.

3. The secretary of state shall make a proclamation under his hand and seal of office, as to the corporations whose names are included in such list as finally corrected, declaring such corporations dissolved and their charters forfeited pursuant to the provisions of this section. He shall file the original proclamation in his office and shall publish a copy thereof in the state bulletin no later than three months following receipt of the list by him.

4. Upon the publication of such proclamation in the manner aforesaid, each corporation named therein shall be deemed dissolved without further legal proceedings.

5. The secretary of state shall mail a copy of the state bulletin containing such proclamation to the clerk of each county in the state. The county clerk shall file the copy without charge but need not record it.

6. The names of all corporations so dissolved shall be reserved for a period of three months immediately following the publication of the proclamation, and during such period no corporation shall be formed under a name the same as any name so reserved or so nearly resembling it as to be calculated to deceive, nor shall any foreign corporation, within such period, be authorized to do business in this state under a name the same as any name so reserved or so nearly resembling it as to be calculated to deceive.

7. Any corporation so dissolved may file in the department of state a certificate of consent of the commissioner of taxation and finance. Such certificate of consent shall be given only if the commissioner of taxation and finance ascertains that all fees and taxes imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, as well as penalties and interest charges related thereto, accrued against the corporation have been paid. The filing of such certificate of consent shall have the effect of annulling all of the proceedings theretofore taken for the dissolution of such corporation under the provisions of this section and it shall thereupon have such corporate powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published. The fee of the secretary of state for filing such certificate shall be fifty dollars and if it is filed later than three months after the date of publication of the proclamation the secretary of state shall collect a further sum equal to one-fortieth of one percentum of all shares with par value and two and one-half cents for every share without par value which such corporation was authorized to have at the time of such publication. No such certificate shall be filed if the name of the corporation is the same as, or so nearly resembles as to be calculated to deceive, that of a domestic corporation formed later than three months after the publication of the proclamation of dissolution or of a

foreign corporation which has obtained authority to do business in the state later than three months after such proclamation unless there is simultaneously filed in the department of state a certificate of change of name. Such certificate of change of name shall be executed in like manner as if such corporation had not been dissolved. Any corporation dissolved pursuant to this section and desiring to annul the dissolution proceedings later than three months from the date of proclamation of dissolution, may, if such name is still available, pay to the secretary of state the fees hereinbefore in this subdivision mentioned, or may submit with such payment a written application requesting the reservation of another available name, and thereupon the secretary of state shall reserve such name for a period of thirty days from the date of such payment to permit the completion of such annulment. No moneys so paid shall in any event be returned by the secretary of state.

8. If, after the publication of such proclamation, it shall appear that the name of any corporation was erroneously included therein, the state tax commission shall so certify to the secretary of state, and the secretary of state shall make appropriate entry on the records of the department of state, which entry shall have the effect of annulling all of the proceedings theretofore taken for the dissolution of such corporation under the provisions of this section, and it shall have such corporate powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published.

9. Whenever a corporation shall have complied with subdivision seven of this section, or whenever the proceeding specified in subdivision eight of this section shall have been taken, the secretary of state shall publish a notice thereof in the state advertising bulletin and shall send a copy of such bulletin to the county clerk of the county in which, according to his records, the office of the corporation is located. Such county clerk shall file such copy and make appropriate entry on his records without charge.

10. The provisions of section twenty-nine of the general corporation law shall apply to any corporation heretofore or hereafter dissolved

under this section except for those corporations governed by the business corporation law as to which section one thousand nine of such law shall apply.

§ 203-b. Annulment of authority to do business by foreign corporations. 1. On or before the last day of March, June, September or December in each calendar year, the tax commission may certify and transmit to the department of state a list containing the names of any or all such foreign corporations, except banking corporations, fire, marine, casualty and life insurance companies, co-operative fraternal insurance companies and building and loan associations, which have been authorized to do business in this state pursuant to article thirteen or article fifteen-a of the business corporation law and have not filed reports required under this article during the period of time next preceding the date of such certification applicable to business corporations as set forth in section two hundred three-a of this chapter, have been delinquent in the payment of taxes duly assessed pursuant to this article for the period applicable to business corporations as set forth in such section, or have been delinquent in the payment of maintenance fees imposed under this article for a period exceeding ninety days.

2. If the secretary of state, upon comparing the names so certified with his records, shall discover error, he may return the list to the tax commission for correction.

3. The secretary of state shall make a proclamation under his hand and seal of office, as to the corporations whose names are included in such list as finally corrected, declaring the authority of such corporations to do business in this state annulled pursuant to the provisions of this section. He shall file the original proclamation in his office and shall publish a copy thereof in the state bulletin no later than three months following receipt of the list by him.

4. Upon the publication of such proclamation in the manner aforesaid, each corporation named therein shall be deemed to have had its authority

annulled without further legal proceedings.

5. The secretary of state shall mail a copy of the state bulletin containing such proclamation to the clerk of each county in the state. The county clerk shall file the copy without charge but need not record it.

6. The names of all corporations whose authority was so annulled shall be reserved for a period of three months immediately following the publication of the proclamation, and during such period no corporation shall be formed under a name the same as any name so reserved or so nearly resembling it as to be calculated to deceive, nor shall any foreign corporation, within such period, be authorized to do business in this state under a name the same as any name so reserved or so nearly resembling it as to be calculated to deceive.

7. Any corporation whose authority was so annulled may file in the department of state a certificate of consent of the commissioner of taxation and finance. Such certificate of consent shall be given only if the commissioner of taxation and finance ascertains that all fees and taxes imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, as well as penalties and interest charges related thereto, accrued against the corporation have been paid. The filing of such certificate of consent shall have the effect of annulling all of the proceedings theretofore taken for the annulment of authority of such corporation under the provisions of this section and it shall thereupon have such corporate powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published. The fee of the secretary of state for filing such certificate shall be fifty dollars. No such certificate shall be filed if the name of the corporation is the same as, or so nearly resembles as to be calculated to deceive, that of a domestic corporation formed later than three months after the publication of the proclamation of annulment or of a foreign corporation which has obtained authority to do business in the state later than three months after such proclamation unless there is simultaneously filed in the department of state a

certificate of amendment of its application for authority under section thirteen hundred nine of the business corporation law showing a change of name in compliance with such section. Such certificate shall be executed in a like manner as if the authority of such corporation had not been annulled. Any corporation whose authority was annulled pursuant to this section and desiring to annul the annulment of authority later than three months from the date of proclamation thereof, may, if such name is still available pay to the secretary of state the fee (other than the maintenance fee) hereinbefore in this subdivision mentioned, or may submit with such payment a written application requesting the reservation of another available name, and thereupon the secretary of state shall reserve such name for a period of thirty days from the date of such payment to permit the completion of such annulment of authority. No moneys so paid shall in any event be returned by the secretary of state.

8. If, after the publication of such proclamation, it shall appear that the name of any corporation was erroneously included therein, the state tax commission shall so certify to the secretary of state, and the secretary of state shall make appropriate entry on the records of the department of state, which entry shall have the effect of annulling all of the proceedings theretofore taken for the annulment of authority of such corporation under the provisions of this section, and it shall have such corporate powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published.

9. Whenever a corporation shall have complied with subdivision seven of this section, or whenever the proceeding specified in subdivision eight of this section shall have been taken, the secretary of state shall publish a notice thereof in the state advertising bulletin and shall send a copy of such bulletin to the county clerk of the county in which, according to his records, the office of the corporation is located. Such county clerk shall file such copy and make appropriate entry on his records without charge.

§ 204. Reports to be made by the secretary of state. 1. Report. The secretary of state shall transmit to the commissioner a report of the stock corporations or corporations formed for profit whose certificates of incorporation are filed, or of the foreign stock corporations or corporations formed for profit to whom a certificate of authority has been issued to do business in this state.

2. Contents of report. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, its duration, the names and places of residence of its directors, and, if a foreign corporation, its place of business within the state and the name and address of its designee. In the case of a domestic business corporation, such report shall also state the accounting period which the corporation intends to establish as its first calendar or fiscal year for reporting the franchise tax on business corporations imposed by article nine-A of this chapter, and in the case of a foreign business corporation, the accounting period which it uses or will use to compute its federal income tax.

3. Notice. The secretary of state shall also cause to be transmitted to the commissioner notice of all dissolutions, mergers, consolidations, take-overs, increases and decreases of capital stock, changes of names and re-organization of domestic stock corporations or corporations formed for profit, and dissolutions, withdrawals and revocations of and changes of designees of foreign corporations, filed or recorded in his or her office.

4. Additional reports. The secretary of state shall make like reports to the commissioner whenever required by him or her relating to any such corporations whose certificates have been filed or to whom certificate of authority has been issued prior to the time this article takes effect, and during any period of time specified by the commissioner in his or her request for such report.

5. Definitions. For purposes of this section, the term "corporation" shall be deemed to include a limited liability company and a limited liability partnership registered under article eight-B of the

partnership law, and the term "certificates of incorporation" shall be deemed to include articles of organization of a limited liability company and, with respect to a limited liability partnership, a registration described in section 121-1500 of the partnership law or a notice described in section 121-1502 of such law.

§ 205. Deposit of moneys collected from taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this chapter. 1. (a)

From moneys collected from taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this chapter during the period from April first, nineteen hundred eighty-one through March thirty-first, nineteen hundred eighty-two: (i) the first one hundred million dollars shall be deposited pursuant to the provisions of section one hundred seventy-one-a of this chapter; (ii) the next seventy-five million dollars shall be deposited in the mass transit operating assistance fund to the credit of the metropolitan mass transit operating assistance account created pursuant to section eighty-eight-a of the state finance law; and (iii) of any amounts in excess of one hundred seventy-five million dollars collected during such period, sixty percent shall be disbursed pursuant to the provisions of clause (i) of this paragraph and forty percent pursuant to clause (ii) of this paragraph.

(b) From moneys collected from taxes imposed by such sections during the period from the first day of April to the thirtieth day of June, nineteen hundred eighty-two an amount, which when added to the amounts deposited to the credit of the metropolitan mass transit operating assistance account pursuant to paragraph (a) of this subdivision, shall total eighty-four million dollars which shall be deposited in such account; and the balance of moneys collected during such period shall be deposited pursuant to the provisions of section one hundred seventy-one-a of this chapter.

* 2. Of moneys collected from taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article subsequent to June thirtieth, nineteen hundred eighty-two, sixty percent shall be deposited pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that after April first, nineteen hundred ninety-six, fifty-two percent of such moneys collected on or

after such date shall be so deposited; provided, further, that after January first, nineteen hundred ninety-seven, fifty and one-half percent of such moneys collected on or after such date shall be so deposited; provided, further, that after January first, nineteen hundred ninety-eight, forty-six percent of such moneys collected on or after such date shall be so deposited; provided, further, that after January first, two thousand, thirty-six percent of such moneys collected on or after such date shall be so deposited; provided, further, that after January first, two thousand one but before April first, two thousand four, twenty percent of such moneys collected on or after such date shall be so deposited; and the balance of such collections shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account; provided, however, for taxable years commencing on or after January first, nineteen hundred eighty-five and ending on or before December thirty-first, nineteen hundred eighty-nine, all of the moneys collected from the tax imposed by section one hundred eighty-four of this chapter on corporations, joint-stock companies or associations formed for or principally engaged in the conduct of telephone or telegraph business shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account; and provided, further, that the actual amount of moneys from the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article which shall be deposited in such mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account, pursuant to this subdivision, during the twelve month period from April first, nineteen hundred eighty-five, to and including March thirty-first, nineteen hundred eighty-six, shall not be less than sixty million dollars; provided, further, that for the twenty-four month period from April first, nineteen hundred ninety-four, to and including March thirty-first, nineteen hundred ninety-six, of the moneys so collected, sixty percent shall be deposited in the general fund pursuant to the provisions of section one hundred seventy-one-a of this chapter, thirty-four and four-tenths percent shall be deposited in the revenue accumulation fund and five and six-tenths percent shall be deposited in such mass transportation operating assistance fund to the

credit of such metropolitan mass transportation operating assistance account.

* NB Effective until April 1, 2028

* 2. Of moneys collected from taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this chapter subsequent to June thirtieth, nineteen hundred eighty-two, sixty percent shall be deposited pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that after April first, nineteen hundred ninety-six, fifty-two percent of such moneys collected on or after such date shall be so deposited; provided, further, that after January first, nineteen hundred ninety-seven, fifty and one-half percent of such moneys collected on or after such date shall be so deposited; provided, further, that after January first, nineteen hundred ninety-eight, forty-six percent of such moneys collected on or after such date shall be so deposited; provided, further, that after January first, two thousand, thirty-six percent of such moneys collected on or after such date shall be so deposited; provided, further, that after January first, two thousand one, twenty percent of such moneys collected on or after such date shall be so deposited; and the balance of such collections shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account; provided, however, for taxable years commencing on or after January first, nineteen hundred eighty-five and ending on or before December thirty-first, nineteen hundred eighty-nine, all of the moneys collected from the tax imposed by section one hundred eighty-four of this chapter on corporations, joint-stock companies or associations formed for or principally engaged in the conduct of telephone or telegraph business shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account; and provided, further, that the actual amount of moneys from the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this chapter which shall be deposited in such mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account, pursuant to this subdivision, during the twelve month period from April first, nineteen hundred eighty-five, to and including March thirty-first, nineteen

hundred eighty-six, shall not be less than sixty million dollars; provided, further, that for the twenty-four month period from April first, nineteen hundred ninety-four, to and including March thirty-first, nineteen hundred ninety-six, of the moneys so collected, sixty percent shall be deposited in the general fund pursuant to the provisions of section one hundred seventy-one-a of this chapter, thirty-four and four-tenths percent shall be deposited in the revenue accumulation fund and five and six-tenths percent shall be deposited in such mass transportation operating assistance fund to the credit of such metropolitan mass transportation operating assistance account.

* NB Effective April 1, 2028

3. The moneys collected from the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article on and after April first, two thousand thirteen, after reserving amounts for refunds or reimbursements, shall be distributed as follows: twenty percent of such moneys shall be deposited to the credit of the dedicated highway and bridge trust fund established by section eighty-nine-b of the state finance law, fifty-four percent of such moneys shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account created pursuant to section eighty-eight-a of the state finance law and twenty-six percent of such moneys shall be deposited in the mass transportation operating assistance fund to the credit of the public transportation systems operating assistance account created pursuant to section eighty-eight-a of the state finance law.

§ 206. Deposit and disposition of revenue. The taxes, percentage, interest and other charges imposed by this article shall be collected and deposited and receipts therefor issued by the commissioner and all revenues so collected or received shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

§ 207. Limitation of time. The provisions of the civil practice law

and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of the date of the original enactment of the corporation tax law, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise. Nothing herein shall affect any action or proceeding now actually pending to enforce the collection of such tax or penalty from such real estate.

§ 207-a. Exemption of corporations owned by a municipality. On and after the second day of June, nineteen hundred forty, the provisions of this article shall not apply to any corporation all of the capital stock of which is owned by a municipal corporation of this state.

§ 207-b. Practice and procedure for taxable years ending on or after December thirty-first, nineteen hundred sixty-four.-- For taxable years or periods ending on or after December thirty-first, nineteen hundred sixty-four--

(1) the provisions of article twenty-seven shall apply with respect to the administration of and procedure with respect to the taxes imposed under this article;

(2) any provisions of this article which are inconsistent with or contrary to the provisions of article twenty-seven shall not apply.

ARTICLE 9-A

FRANCHISE TAX ON BUSINESS CORPORATIONS

- Section 208. Definitions.
209. Imposition of tax; exemptions.
- 209-B. Metropolitan transportation business tax surcharge.
- 209-C. Gift for fish and wildlife management.
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- 219. Limitation of time.
- 219-a. Practice and procedure for taxable years ending on or after December thirty-first, nineteen hundred sixty-four.

§ 208. Definitions. As used in this article:

1. The term "corporation" includes (a) an association within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), (b) a joint-stock company or association, (c) a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and (d) any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument. "DISC" and "former DISC" mean any corporation which meets the requirements of subsection (a) of section nine hundred ninety-two of the internal revenue code.

1-A. The term "New York S corporation" means, with respect to any taxable year, a corporation subject to tax under this article for which an election is in effect pursuant to subsection (a) of section six hundred sixty of this chapter for such year, any such year shall be denominated a "New York S year", and such election shall be denominated a "New York S election". The term "New York C corporation" means, with respect to any taxable year, a corporation subject to tax under this article which is not a New York S corporation, and any such year shall be denominated a "New York C year". The term "termination year" means any taxable year of a corporation during which the New York S election terminates on a day other than the first day of such year. The portion of the taxable year ending before the first day for which such termination is effective shall be denominated the "S short year", and the portion of such year beginning on such first day shall be

denominated the "C short year". The term "New York S termination year" means any termination year which is not also an S termination year for federal purposes.

1-B. The term "QSSS" means a corporation which is a qualified subchapter S subsidiary as defined in subparagraph (B) of paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code. The term "exempt QSSS" means a QSSS exempt from tax under this article as provided in paragraph (k) of subdivision nine of this section, or a QSSS described in subclause (i) of clause (B) of subparagraph two of paragraph (k) of subdivision nine of this section, wherein the parent corporation of the QSSS is subject to tax under this article, and the assets, liabilities, income and deductions of the QSSS are treated as the assets, liabilities, income and deductions of the parent corporation. Where a QSSS is an exempt QSSS, then for all purposes under this article:

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

(b) the stocks, bonds and other securities issued by, and any indebtedness from, the QSSS shall not be investment or business capital of the parent corporation,

(c) transactions between the parent corporation and the QSSS, including the payment of interest and dividends, shall not be taken into account, and

(d) general executive officers of the QSSS shall be deemed to be general executive officers of the parent corporation.

2. The term "taxpayer" means any corporation subject to tax under this article.

3. The term "subsidiary" means a corporation of which over fifty percent of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer.

4. The term "stock" means an interest in a corporation that is treated as equity for federal income tax purposes.

5. (a) The term "investment capital" means investments in stocks that (i) satisfy the definition of a capital asset under section 1221 of the internal revenue code at all times the taxpayer owned such stock during the taxable year, (ii) are held by the taxpayer for investment for more than one year, (iii) the dispositions of which are, or would be, treated by the taxpayer as generating long-term capital gains or losses under the internal revenue code, (iv) for stocks acquired on or after January first, two thousand fifteen, at any time after the close of the day in which they are acquired, have never been held for sale to customers in the regular course of business, and (v) before the close of the day on which the stock was acquired, are clearly identified in the taxpayer's records as stock held for investment in the same manner as required under section 1236(a)(1) of the internal revenue code for the stock of a dealer in securities to be eligible for capital gain treatment (whether or not the taxpayer is a dealer of securities subject to section 1236), provided, however, that for stock acquired prior to October first, two thousand fifteen that was not subject to section 1236(a) of the internal revenue code, such identification in the taxpayer's records must occur before October first, two thousand fifteen. Stock in a corporation that is conducting a unitary business with the taxpayer, stock in a corporation that is included in a combined report with the taxpayer pursuant to the commonly owned group election in subdivision three of section two hundred ten-C of this article, and stock issued by the taxpayer shall not constitute investment capital. For purposes of this subdivision, if the taxpayer owns or controls, directly or indirectly, less than twenty percent of the voting power of the stock of a corporation, that corporation will be presumed to be conducting a business that is not unitary with the business of the taxpayer.

(b) There shall be deducted from investment capital any liabilities which are directly or indirectly attributable to investment capital. If the amount of those liabilities exceeds the amount of investment capital, the amount of investment capital will be zero.

(c) Investment capital shall not include any such investments the income from which is excluded from entire net income pursuant to the

provisions of paragraph (c-1) of subdivision nine of this section, and that investment capital shall be computed without regard to liabilities directly or indirectly attributable to such investments, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed, are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof.

(d) If a taxpayer acquires stock that is a capital asset under section 1221 of the internal revenue code during the taxable year and owns that stock on the last day of the taxable year, it will be presumed, solely for purposes of determining whether that stock should be classified as investment capital after it is acquired, that the taxpayer held that stock for more than one year. However, if the taxpayer does not in fact own that stock at the time it actually files its original report for the taxable year in which it acquired the stock, then the presumption in the preceding sentence shall not apply and the actual period of time during which the taxpayer owned the stock shall be used to determine whether the stock should be classified as investment capital after it is acquired. If the taxpayer relies on the presumption in the first sentence of this paragraph but does not own the stock for more than one year, the taxpayer must increase its total business capital in the immediately succeeding taxable year by the amount included in investment capital for that stock, net of any liabilities attributable to that stock computed as provided in paragraph (b) of this subdivision and must increase its business income in the immediately succeeding taxable year by the amount of income and net gains (but not less than zero) from that stock included in investment income, less any interest deductions directly or indirectly attributable to that stock, as provided in subdivision six of this section.

(e) When income or gain from a debt obligation or other security cannot be apportioned to the state using the apportionment factor

determined under section two hundred ten-A of this article as a result of United States constitutional principles, the debt obligation or other security will be included in investment capital.

6. (a) (i) The term "investment income" means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing entire net income, less, in the discretion of the commissioner, any interest deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income, provided, however, that in no case shall investment income exceed entire net income. (ii) If the amount of interest deductions subtracted under subparagraph (i) of this paragraph exceeds investment income, the excess of such amount over investment income must be added back to entire net income. (iii) If the taxpayer's investment income determined without regard to the interest deductions subtracted under subparagraph (i) of this paragraph comprises more than eight percent of the taxpayer's entire net income, investment income determined without regard to such interest deductions cannot exceed eight percent of the taxpayer's entire net income.

(b) In lieu of subtracting from investment income the amount of those interest deductions, the taxpayer may make a revocable election to reduce its total investment income, determined after applying the limitation in subparagraph (iii) of paragraph (a) of this subdivision, by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraphs (b) and (c) of subdivision six-a of this section. If the taxpayer subsequently revokes this election, the taxpayer must revoke the elections provided for in paragraphs (b) and (c) of subdivision six-a of this section. A taxpayer that does not make this election because it has no investment capital will not be precluded from making those other elections.

(c) Investment income shall not include any amount treated as dividends pursuant to section seventy-eight of the internal revenue code.

6-a. (a) The term "other exempt income" means the sum of exempt CFC income and exempt unitary corporation dividends.

(b) "Exempt CFC income" means (i) except to the extent described in subparagraph (ii) of this paragraph, the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951 of the internal revenue code, received from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, (ii) such income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of such section 951 of the internal revenue code by reason of subsection (a) of section 965 of the internal revenue code, as adjusted by subsection (b) of section 965 of the internal revenue code, and without regard to subsection (c) of such section, received from a corporation that is not included in a combined report with the taxpayer, and (iii) ninety-five percent of the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of the internal revenue code, without regard to the deduction under section 250 of the internal revenue code, received from a corporation that is not included in a combined report with the taxpayer, less, (iv) in the discretion of the commissioner, any interest deductions directly or indirectly attributable to that income. In lieu of subtracting from its exempt CFC income the amount of those interest deductions, the taxpayer may make a revocable election to reduce its total exempt CFC income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision six of this section and paragraph (c) of this subdivision. If the taxpayer subsequently revokes this election, the taxpayer must revoke the elections provided for in paragraph (b) of subdivision six of this section and paragraph (c) of this subdivision. A taxpayer which does not make this election because it has no exempt CFC income will not be precluded from making those other elections. The income described in subparagraphs (ii) and (iii) of this paragraph shall not constitute investment income. The income described in subparagraph (iii) of this paragraph shall not constitute exempt unitary corporation dividends.

(c) "Exempt unitary corporation dividends" means those dividends from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, less, in the discretion of the commissioner, any interest deductions directly or

indirectly attributable to such income. Other than dividend income received from corporations that are taxable under a franchise tax imposed by article nine or article thirty-three of this chapter or would be taxable under a franchise tax imposed by article nine or article thirty-three of this chapter if subject to tax, in lieu of subtracting from this dividend income those interest deductions, the taxpayer may make a revocable election to reduce the total amount of this dividend income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision six of this section and paragraph (b) of this subdivision. If the taxpayer subsequently revokes this election, the taxpayer must also revoke the elections provided for in paragraph (b) of subdivision six of this section and paragraph (b) of this subdivision. A taxpayer which does not make this election because it has not received any exempt unitary corporation dividends or is precluded from making this election for dividends received from corporations taxable under a franchise tax imposed by article nine or article thirty-three of this chapter or would be taxable under a franchise tax imposed by article nine or article thirty-three of this chapter if subject to tax will not be precluded from making those other elections.

(d) If the taxpayer attributes interest deductions to other exempt income and the amount subtracted exceeds other exempt income, the excess of the interest deductions over other exempt income must be added back to entire net income. In no case shall other exempt income exceed entire net income.

(e) Other exempt income shall not include any amount treated as dividends pursuant to section seventy-eight of the internal revenue code.

7. (a) The term "business capital" means all assets, other than investment capital and stock issued by the taxpayer, less liabilities not deducted from investment capital. Business capital shall include only those assets the income, loss or expense of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount) in the computation of entire net income for the taxable year.

(b) Provided, however, "business capital" shall not include assets to

the extent employed for the purpose of generating income which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision nine of this section and shall be computed without regard to liabilities directly or indirectly attributable to such assets, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed, are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof.

8. The term "business income" means entire net income minus investment income and other exempt income. In no event shall the sum of investment income and other exempt income exceed entire net income. If the taxpayer makes the election provided for in subparagraph one of paragraph (a) of subdivision five of section two hundred ten-A of this article, then all income from qualified financial instruments shall constitute business income.

8-A. Provided, however, that with respect to a DISC or a former DISC, the following provisions shall apply:

(a) investments in the stocks, bonds or other securities of a DISC or any indebtedness from a DISC shall not be treated as investment capital under subdivision five of this section,

(b) any amounts deemed distributed from a DISC or a former DISC which are taxable as dividends pursuant to subsection (b) of section nine hundred ninety-five of the internal revenue code of nineteen hundred fifty-four shall be treated as business income, except any such amounts from a former DISC attributable to amounts includible in a taxpayer's entire net income for a prior taxable year under subparagraph (B) of paragraph (i) of subdivision nine of this section shall be excluded from entire net income,

(c) any gain recognized for federal income tax purposes on the

disposition of stock in a DISC, and any gain recognized on the disposition of stock in a former DISC, includible in gross income as a dividend pursuant to subsection (c) of section nine hundred ninety-five of the internal revenue code of nineteen hundred fifty-four, shall be treated as business income, and

(d) except as provided in paragraph (i) of subdivision nine of this section, any actual distribution from a DISC or a former DISC shall be treated as business income except an actual distribution which for federal income tax purposes is treated as made out of "other earnings and profits" under section nine hundred ninety-six of the internal revenue code of nineteen hundred fifty-four, in which case such actual distribution shall be treated as investment income under this article.

9. The term "entire net income" means total net income from all sources, which shall be presumably the same as the entire taxable income, which, except as hereinafter provided in this subdivision,

(i) the taxpayer is required to report to the United States treasury department, or

(ii) the taxpayer would have been required to report to the United States treasury department if it had not made an election under subchapter s of chapter one of the internal revenue code, or

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

(iv) in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code is effectively connected with the conduct of a trade or business within the United States as determined under section 882 of the Internal Revenue Code.

(a) Entire net income shall not include:

(3) bona fide gifts,

(4) income and deductions with respect to amounts received from school districts and from corporations and associations, organized and operated exclusively for religious, charitable or educational purposes, no part

of the net earnings of which inures to the benefit of any private shareholder or individual, for the operation of school buses,

(5) (i) any refund or credit of a tax imposed under this article, article twenty-three, or former article thirty-two of this chapter, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article, article twenty-three, or former article thirty-two of this chapter for any prior year, or (ii) any refund or credit of a tax imposed under sections one hundred eighty-three, one hundred eighty-three-a, one hundred eighty-four or one hundred eighty-four-a of this chapter;

(6) any amount treated as dividends pursuant to section seventy-eight of the internal revenue code to the extent that such dividends are not deducted under section two hundred fifty of such code;

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

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning

in nineteen hundred eighty-nine, any amount which the taxpayer could have excluded from federal taxable income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

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

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

(14) The amount deductible pursuant to paragraph (l) of this subdivision.

(16) In the case of a taxpayer subject to the modification provided by subparagraph sixteen of paragraph (b) of this subdivision, the amount required to be recaptured pursuant to subsection (d) of section 179 of the internal revenue code with respect to property upon which such modification was based.

(17) for taxable years beginning after December thirty-first, two thousand two, the amount deductible pursuant to paragraph (n-1) of this subdivision.

(18) the amount of income or gain included in federal taxable income of a taxpayer that is a partner in a qualified entity or is a qualified entity that is located both within and without a New York state innovation hot spot, to the extent that the income or gain is attributable to the operations of a qualified entity at or as part of the New York state innovation hot spot as provided in section thirty-eight of this chapter.

(19) the amount computed pursuant to paragraph (r), (s) or (t) of this subdivision, but only the amount determined pursuant to one of such paragraphs.

(20) Any amount excepted, for purposes of subsection (a) of section one hundred eighteen of the internal revenue code, from the term "contribution to the capital of the taxpayer" by paragraph two of subsection (b) of section one hundred eighteen of the internal revenue code.

(21) The amount of any gain added back to determine entire net income in a previous taxable year pursuant to subparagraph twenty-seven of paragraph (b) of subdivision nine of this section that is included in federal gross income for the taxable year.

(22) Grants received pursuant to the COVID-19 pandemic small business recovery grant program, established in section 16-ff of the New York state urban development corporation act, to the extent includable in federal taxable income.

(23) The amount of any federal deduction disallowed pursuant to section 280E of the internal revenue code related to the production and distribution of adult-use cannabis products, as defined by article twenty-C of this chapter, not used as the basis for any other tax deduction, exemption, or credit and not otherwise required to be added back by paragraph (b) of this subdivision in computing entire net income.

(24) For taxable years beginning on or after January first, two thousand twenty-five, in the case of qualified production property described in paragraph two of subsection (n) of section one hundred sixty-eight of the internal revenue code, the amount of any deduction allowed pursuant to subsection (a) of section one hundred sixty-seven of the internal revenue code as if the taxpayer has not made an election pursuant to subsection (n) of section one hundred sixty-eight of the internal revenue code.

(25) For taxable years beginning on or after January first, two thousand twenty-five, the amount of any foreign and domestic research or experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code, paid or incurred in each taxable year on and after January first, two thousand twenty-five, amortized over a sixty-month period as if the election in subsection (c) of section 174A of the internal revenue code applied to such foreign and domestic research or experimental expenditures.

(26) For taxable years beginning on or after January first, two thousand twenty-five, the remaining amount of any foreign and domestic research or experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code, paid or incurred prior to January first, two thousand twenty-five, determined as if section one hundred seventy-four of the internal revenue code in

effect as of January first, two thousand twenty-two, applied to such expenditures.

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

(1) in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code, (i) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, but only if such income is treated as effectively connected with the conduct of a trade or business in the United States pursuant to section 864 of the internal revenue code, (ii) any income exempt from federal taxable income under any treaty obligation of the United States, but only if such income would be treated as effectively connected in absence of such exemption provided that such treaty obligation does not preclude the taxation of such income by a state, or (iii) any income which would be treated as effectively connected if such income were not excluded from gross income pursuant to subsection (a) of section 103 of the internal revenue code;

(2) any part of any income from dividends or interest on any kind of stock, securities or indebtedness,

(3) taxes on or measured by profits or income paid or accrued to the United States or any of its possessions, territories or commonwealths, including taxes in lieu of any of the foregoing taxes otherwise generally imposed by any possession, territory or commonwealth of the United States,

(3-a) taxes on or measured by profits or income, or which include profits or income as a measure, paid or accrued to any other state of the United States, or any political subdivision thereof, or to the District of Columbia, including taxes expressly in lieu of any of the foregoing taxes otherwise generally imposed by any other state of the United States, or any political subdivision thereof, or the District of Columbia;

(4) taxes imposed under this article and article thirty-two as in effect on December thirty-first, two thousand fourteen and sections one hundred eighty-three, one hundred eighty-three-a, one hundred eighty-four and one hundred eighty-four-a of this chapter,

(4-a)(A) in those instances where a credit for the special additional

mortgage recording tax credit is allowed under subdivision nine of section two hundred ten-B of this article, the amount allowed as an exclusion or deduction for the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter in determining the entire taxable income which the taxpayer is required to report to the United States treasury department, and (B) unless the credit allowed pursuant to subdivision nine of section two hundred ten-B of this article is reflected in the computation of the gain or loss so as to result in an increase in such gain or decrease of such loss, for federal income tax purposes, from the sale or other disposition of the property with respect to which the special additional mortgage recording tax imposed pursuant to subdivision one-a of section two hundred fifty-three of this chapter was paid, the amount of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter which was paid and which is reflected in the computation of the basis of the property so as to result in a decrease in such gain or increase in such loss for federal income tax purposes from the sale or other disposition of the property with respect to which such tax was paid.

(6) any amount allowed as a deduction for the taxable year under section 172 of the internal revenue code, including carryovers of deductions from prior taxable years.

(8) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified

mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code, property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code;

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

(15) Real property taxes paid on qualified agricultural property and deducted in determining federal taxable income, to the extent of the amount of the agricultural property tax credit allowed under subdivision eleven of section two hundred ten-B of this article.

(16) In the case of a taxpayer which is not an eligible farmer as defined in paragraph (b) of subdivision eleven of section two hundred ten-B of this article, the amount of any deduction claimed pursuant to

section 179 of the internal revenue code with respect to a sport utility vehicle which is not a passenger automobile as defined in paragraph 5 of subsection (d) of section 280F of the internal revenue code.

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

(18) Premiums paid for environmental remediation insurance, as defined in section twenty-three of this chapter, and deducted in determining federal taxable income, to the extent of the amount of the environmental remediation insurance credit allowed under such section twenty-three and subdivision nineteen of section two hundred ten-B of this article.

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

(20) The amount of any federal deduction for taxes imposed under article twenty-three of this chapter.

(20-a) The amount of any federal deduction for the excise tax on telecommunication services to the extent such taxes are used as the basis of the calculation of the tax-free NY area excise tax on telecommunication services credit allowed under subdivision forty-four of section two hundred ten-B of this article.

(21) The amount of any federal deduction for real property taxes to the extent such taxes are used as the basis of the calculation of the real property tax credit for manufacturers allowed under subdivision forty-three of section two hundred ten-B of this article.

(22) the amount of any deduction for charitable contributions allowed under section one hundred seventy of the internal revenue code to the extent such contributions are used as the basis of the calculation of the farm donations to food pantries credit under subdivision fifty-two of section two hundred ten-B of this article.

(23) The amount of any federal deduction allowed pursuant to

subsection (c) of section 965 of the internal revenue code.

(24) The amount of any federal deduction allowed pursuant to section 250(a)(1)(A) of the internal revenue code.

(25) The amount of any federal deduction allowed pursuant to section 250(a)(1)(B)(i) of the internal revenue code.

(26) For taxable years beginning in two thousand nineteen and two thousand twenty, the amount of the increase in the federal interest deduction allowed pursuant to section 163(j)(10)(A)(i) of the internal revenue code.

(27) The amount of any gain excluded from federal gross income for the taxable year by subparagraph (A) of paragraph (1) of subsection (a) of section 1400Z-2 of the internal revenue code.

(28) For taxable years beginning on or after January first, two thousand twenty-five, in the case of qualified production property described in paragraph two of subsection (n) of section one hundred sixty-eight of the internal revenue code, any amount which the taxpayer claimed as a deduction under subsection (a) of section one hundred sixty-seven of the internal revenue code that included an allowance solely as a result of an election made pursuant to subsection (n) of section one hundred sixty-eight of the internal revenue code.

(29) For taxable years beginning on or after January first, two thousand twenty-five, any amount claimed as a deduction under sections one hundred seventy-four and 174A of the internal revenue code in effect as of January first, two thousand twenty-five, and any amount claimed as a deduction pursuant to federal Public Law 119-21, title VII, section 70302(f)(2)(a), for foreign and domestic research or experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code.

(c-1)(1) Notwithstanding any other provision of this article, in the case of a taxpayer which is a foreign air carrier holding a foreign air carrier permit issued by the United States department of transportation pursuant to section four hundred two of the federal aviation act of nineteen hundred fifty-eight, as amended, and which is qualified under subparagraph two of this paragraph, entire net income shall not include, and shall be computed without the deduction of, amounts directly or indirectly attributable to, (i) any income derived from the international operation of aircraft as described in and subject to the

provisions of section eight hundred eighty-three of the internal revenue code, (ii) income without the United States which is derived from the operation of aircraft, and (iii) income without the United States which is of a type described in subdivision (a) of section eight hundred eighty-one of the internal revenue code except that it is derived from sources without the United States. Entire net income shall include income described in clauses (i), (ii) and (iii) of this subparagraph in the case of taxpayers not described in the previous sentence.

(2) A taxpayer is qualified under this subparagraph if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any income tax or other tax based on or measured by income or receipts imposed by such foreign country or countries or any political subdivision thereof, or if so subject to such tax, are provided an exemption from such tax equivalent to that provided for herein.

(c-2) Adjustments by qualified public utilities. (1) In the case of a taxpayer which is a qualified public utility, entire net income shall be computed with the adjustments set forth in this paragraph.

(2) Definitions. (A) Qualified public utility. The term "qualified public utility" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was subject to the ratemaking supervision of the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under former section one hundred eighty-six of this chapter.

(B) Transition property. The term "transition property" means property placed in service by the taxpayer before January first, two thousand, for which a depreciation deduction is allowed under section one hundred sixty-seven of the internal revenue code.

(3) Federal depreciation disallowed. With respect to transition property, the deduction for federal income tax purposes for depreciation shall not be allowed.

(4) New York depreciation. With respect to transition property, a deduction shall be allowed for the depreciation expense shown on the books and records of the taxpayer for the taxable year and determined in accordance with generally accepted accounting principles.

(5) Regulatory assets. A deduction shall be allowed for amounts recognized as expense on the books and records of the taxpayer for the taxable year, which amounts were recognized as expense for federal income tax purposes in a taxable year ending on or before December thirty-first, nineteen hundred ninety-nine, where: (A) such amounts represent expenditures which, when made, were charged to a deferred debit account or similar asset account on the books and records of the taxpayer, and where (B) the recognition of expense on the books and records of the taxpayer is matched by revenue stemming from a procedure or adjustment allowing the recovery of such expenditures, and where (C) such revenue is recognized for federal income tax purposes in the taxable year.

(6) Basis for gain or loss. (A) Recognition transactions. (i) General rule - book basis. Except as provided in subclause (ii) of this clause, where transition property is sold or otherwise disposed of in the taxable year in a transaction of the type requiring recognition of gain or loss for federal income tax purposes, the basis for determining the amount of such gain or loss under this article shall be the cost of the property less the accumulated depreciation on the property determined on the books and records of the taxpayer in accordance with generally accepted accounting principles.

(ii) Qualified gain - New York basis. Where a sale or disposition described in subclause (i) of this clause results in recognition of gain for federal income tax purposes, and where either (I) such recognition occurs in a taxable year ending after nineteen hundred ninety-nine and before two thousand ten, or (II) such recognition is with respect to a nuclear electric generating facility, the basis for determining the amount of such gain under this article shall be the cost of the property less the aggregate of the New York depreciation deductions on the property determined under subparagraph four of this paragraph.

(iii) No conversion of gain to loss. In the event that the basis determined under subclause (ii) of this clause results in determination of a loss on the sale or disposition of the property, no gain or loss shall be recognized under this article with respect to such sale or disposition.

(B) Nonrecognition transactions. (i) Carryover basis. (I) where transition property is disposed of ("original disposition") in a

transaction of a type requiring deferral of recognition of gain or loss for federal income tax purposes, and where (II) there is a subsequent recognition of gain or loss for federal income tax purposes ("clause B gain or loss"), the amount of which is determined by reference, in whole or in part, to the basis of such transition property ("underlying transition property"), then (III) the amount of such clause B gain or loss under this article shall be adjusted as provided in subclause (ii) or (iii) of this clause.

(ii) General rule - book basis adjustment. Except as provided in subclause (iii) of this clause, the amount of clause B gain shall be reduced, or the amount of clause B loss increased, by the amount by which the book basis of the underlying transition property on the date of original disposition (determined using the provisions of subclause (i) of clause (A) of this subparagraph) exceeds the federal income tax basis of such property on such date.

(iii) Qualified gain - New York basis adjustment. Where clause B gain either (I) occurs in a taxable year ending after nineteen hundred ninety-nine and before two thousand ten, or (II) is with respect to a nuclear electric generating facility, the amount of such gain under this article shall be reduced, but not below zero, by the amount by which the New York basis of the underlying transition property on the date of original disposition (determined using the provisions of subclause (ii) of clause (A) of this subparagraph) exceeds the federal income tax basis of such property on such date.

(iv) Application to replacement property and transferee taxpayers. This clause shall apply whether the clause B gain or loss: (I) is with respect to either transition property or depreciable property the basis of which is determined by reference to transition property, or (II) is recognized by either a qualified public utility or by a taxpayer which is a transferee of transition property (whether or not such transferee is a qualified public utility, notwithstanding subparagraph one of this paragraph).

(c-3) Depreciation adjustments by qualified power producers and pipeline companies. (1) In the case of a qualified taxpayer, entire net income shall be computed with the depreciation adjustments set forth in this paragraph.

(2) Definitions. (A) Qualified taxpayer. The term "qualified taxpayer"

means a qualified power producer or a qualified pipeline.

(B) Qualified power producer. The term "qualified power producer" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was not subject to the ratemaking supervision of the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under former section one hundred eighty-six of this chapter on account of its being principally engaged in the business of supplying electricity.

(C) Qualified pipeline. The term "qualified pipeline" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was subject to the ratemaking supervision of either the federal energy regulatory commission or the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under sections one hundred eighty-three and one hundred eighty-four of this chapter on account of its being principally engaged in the business of pipeline transmission.

(D) Transition property. The term "transition property" means property placed in service by a qualified taxpayer before January first, two thousand, for which a depreciation deduction is allowed under section one hundred sixty-seven of the internal revenue code.

(3) Federal depreciation disallowed. With respect to transition property, the deduction for federal income tax purposes for depreciation shall not be allowed.

(4) New York depreciation. With respect to transition property, a deduction shall be allowed for the depreciation expense computed as provided in this subparagraph. (A) All transition property shown on the books and records of the taxpayer on January first, two thousand shall be treated as a single asset placed in service on such date. The New York basis for purposes of computing the depreciation deduction on such single asset shall be the net book value of such transition property determined on the first day of the federal taxable year ending in two thousand (or on the date any such property is placed in service, if later) adjusted as provided in clause (B) of this subparagraph.

(B) If transition property is sold or otherwise disposed of, the New York basis of the single asset shall be reduced on the date of such sale or disposition by the amount of the adjusted federal tax basis of such property on such date.

(C) The New York depreciation deduction allowed for any taxable year with respect to such single asset shall be computed using the straight-line method, a twenty-year life, and a salvage value of zero.

(D) For purposes of this subparagraph, the term "net book value" means cost reduced by accumulated depreciation shown on the books and records of the taxpayer and determined, in the case of a qualified power producer, in accordance with generally accepted accounting principles; and in the case of a qualified pipeline, in accordance with the taxpayer's regulatory reports filed with the federal energy regulatory commission or state department of public service.

(c-4) Depreciation and interest deduction adjustments for covered properties owned by an institutional real estate investor. (1) Notwithstanding any other provision of this section, in the case of a corporation or combined group that is an institutional real estate investor or a partner, member or shareholder of an entity that is an institutional real estate investor, entire net income shall be computed with the adjustments for depreciation and interest related to covered properties as set forth in this paragraph.

(2) Definitions. (A) "Institutional real estate investor" means an entity or combined group that, directly or indirectly (i) owns ten or more covered properties, (ii) manages funds pooled from investors and acts as a fiduciary with respect to one or more investors, and (iii) has thirty million dollars or more in net value or assets under management on any day during the taxable year. An entity is considered owning a covered property if it directly owns the covered property or indirectly owns ten percent or more of the covered property.

(B) "Covered property" means a residential property consisting of no more than two dwelling units located in New York state.

(3) Depreciation deductions. With respect to covered properties, no deduction for depreciation allowed under the internal revenue code or this section shall be allowed.

(4) Interest deductions. With respect to covered properties, the interest deduction for federal income tax purposes allowed under section one hundred sixty-three of the internal revenue code shall not be allowed and must be added back in the computation of entire net income, except with respect to interest paid or accrued in the taxable year when such covered property is sold to an individual for use as the principal

residence of such individual or sold to a nonprofit organization that has as its principal purpose the creation, development, or preservation of affordable housing. For purposes of this subparagraph, any amount of interest that would have been allowed under section one hundred sixty-three of the internal revenue code in connection with a covered property but for an election to treat such interest as chargeable to capital account shall be treated as an amount allowed under section one hundred sixty-three of the internal revenue code.

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

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

(h) If the period covered by a report under this article is other than the period covered by the report to the United States treasury department,

(1) except as provided in subparagraph two hereof, entire net income shall be determined by multiplying the taxable income reported to such department (as adjusted pursuant to the provisions of this article) by the number of calendar months or major parts thereof covered by the report under this article and dividing by the number of calendar months or major parts thereof covered by the report to such department. If it shall appear that such method of determining entire net income does not properly reflect the taxpayer's income during the period covered by the report under this article, the commissioner shall be authorized in its discretion to determine such entire net income solely on the basis of the taxpayer's income during the period covered by its report under this article.

(2) In the case of a New York S termination year, an equal portion of entire net income shall be assigned to each day of such year. The portion of such entire net income thereby assigned to the S short year and the C short year shall be included in the respective reports for the

S short year and the C short year under this article. However, where paragraph three of subsection (s) of section six hundred twelve of this chapter applies, the portion of such entire net income assigned to the S short year and the C short year shall be determined under normal tax accounting rules.

(i) With respect to a DISC which during any taxable year or reporting year (1) received more than five percent of its gross sales from the sale of inventory or other property which it purchased from its stockholders, (2) received more than five percent of its gross rentals from the rental of property which it purchased or rented from its stockholders or (3) received more than five percent of its total receipts other than sales and rentals from its stockholders, the following provisions shall apply.

(A) For any taxable year in which sub-paragraph (B) of this paragraph is in effect and not rendered invalid, a DISC meeting the above test shall be exempt from all taxes imposed by this article.

(B) Supplemental to the provisions of subdivision five of section two hundred eleven of this article, any taxpayer required to compute a tax under this article, which during the taxable year being reported was a stockholder in any DISC meeting the test prescribed in this paragraph, shall for any taxable year ending after December thirty-first, nineteen hundred seventy-one adjust each item of its receipts, expenses, assets and liabilities, as otherwise computed under this article, by adding thereto its attributable share of each such DISC's receipts, expenses, assets and liabilities as reportable by each such DISC to the United States Treasury Department for its annual reporting period ending during the current taxable year of such taxpayer; provided, however, (1) that all transactions between the taxpayer and each such DISC shall be eliminated from the taxpayer's adjusted receipts, expenses, assets and liabilities; (2) that the taxpayer's entire net income as otherwise computed under this section, shall be reduced by subtracting the amount of the deemed distribution of current income, if any, from each such DISC already included in the entire net income of such taxpayer by virtue of having been included in its entire taxable income for that taxable year as reported to the United States Treasury Department; and (3) that in the event this paragraph should be rendered invalid, all DISC's and their stockholders taxable hereunder shall be taxed instead

under the remaining portions of this article.

(j) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to subparagraph eight of paragraph (b) of this subdivision, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty. This paragraph shall not apply to property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine.

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

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

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

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

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

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

(A) where the QSSS is a taxpayer,

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

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

(B) where the QSSS is not a taxpayer,

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

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

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

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

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

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

(5) Excluded corporation. The term "excluded corporation" means a corporation subject to tax under sections one hundred eighty-three through one hundred eighty-six, inclusive, or article thirty-three of

this chapter, or a foreign corporation not taxable by this state which, if it were taxable, would be subject to tax under any of such sections or article.

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

(7) QSSS inclusion election. The election under subclause (i) of clause (B) of subparagraph two of this paragraph shall be effective for the taxable year for which made and for all succeeding taxable years of the corporation until such election is terminated. An election or termination shall be made on such form and in such manner as the commissioner may prescribe by regulation or instruction.

(l) Emerging technology investment deferral. In the case of any sale of a qualified emerging technologies investment held for more than thirty-six months and with respect to which the taxpayer elects the application of this paragraph, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any qualified emerging technologies investment purchased by the taxpayer during the three hundred sixty-five-day period beginning on the date of such sale, reduced by any portion of such cost previously taken into account under this paragraph. For purposes of this paragraph the following shall apply:

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

(2) A qualified emerging technology investment is a qualified investment, that was held by the taxpayer for at least thirty-six months, in a company defined in paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law or an investment in a partnership or limited liability company that is taxed as a partnership to the extent that such partnership or limited liability company invests in qualified emerging technology companies.

(3) For purposes of determining whether the nonrecognition of gain under this subsection applies to a qualified emerging technologies

investment that is sold, the taxpayer's holding period for such investment and the qualified emerging technologies investment that is purchased shall be determined without regard to Internal Revenue Code § 1223.

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

(n-1) For taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph (q) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one.

(o) Related members expense add back. (1) Definitions. (A) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(B) Effective rate of tax. "Effective rate of tax" means, as to any state or U.S. possession, the maximum statutory rate of tax imposed by the state or possession on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or U.S. possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate

of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

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

(2) Royalty expense add backs. (A) Except where a taxpayer is included in a combined report with a related member pursuant to section two hundred ten-C of this article, for the purpose of computing entire net income or other applicable taxable basis, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this paragraph shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the

form specified by the commissioner, meets all of the following requirements: (I) the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the related member was subject to tax on or measured by its net income in this state or another state or possession of the United States or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section two hundred ten of this article for the taxable year.

(iii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this state; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(iv) The adjustment required in this paragraph shall not apply if the taxpayer and the commissioner agree in writing to the application or use

of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

(p) For taxable years beginning after December thirty-first, two thousand two, upon the disposition of property to which paragraph (n-1) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph seventeen of paragraph (a) and subparagraph seventeen of paragraph (b) of this subdivision attributable to such property.

(q) For purposes of paragraphs (n-1) and (p) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section 168 of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after December thirty-first, two thousand two. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(r) Subtraction modification for qualified residential loan portfolios. (1)(A) A taxpayer that is either a thrift institution as defined in subparagraph three of this paragraph or a qualified community bank as defined in subparagraph two of paragraph (s) of this subdivision and maintains a qualified residential loan portfolio as defined in subparagraph two of this paragraph shall be allowed as a deduction in computing entire net income the amount, if any, by which (i) thirty-two percent of its entire net income determined without regard to this paragraph exceeds (ii) the amounts deducted by the taxpayer pursuant to sections 166 and 585 of the Internal Revenue Code less any amounts included in federal taxable income as a result of a recovery of a loan.

(B)(i) If the taxpayer is in a combined report under section two hundred ten-C of this article, this deduction will be computed on a combined basis. In that instance, the entire net income of the combined reporting group for purposes of this paragraph shall be multiplied by a fraction, the numerator of which is the average total assets of all the thrift institutions and qualified community banks included in the combined report and the denominator of which is the average total assets of all the corporations included in the combined report.

(ii) Measurement of assets. For purposes of this paragraph: (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is required by the banking regulator of the taxpayers included in the combined return. In addition, total assets includes leased real property that is not properly reflected on a balance sheet.

(II) Assets will only be included if the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the combined group's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

(III) Tangible real and personal property, such as buildings, land, machinery, and equipment shall be valued at cost. Leased real property that is not properly reflected on a balance sheet will be valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

(IV) Intercompany stockholdings and bills, notes and accounts receivable, and other intercompany indebtedness between the corporations included in the combined report shall be eliminated.

(V) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

(2) Qualified residential loan portfolio. (A) A taxpayer maintains a qualified residential loan portfolio if at least sixty percent of the amount of the total assets at the close of the taxable year of the thrift institution or qualified community bank consists of the assets described in items (i) through (xii) of this clause, with the application of the rule in item (xiii). If the taxpayer is a member of a combined group, the determination of whether there is a qualified residential loan portfolio will be made by aggregating the assets of the thrift institutions and qualified community banks that are members of the combined group.

Assets:

(i) cash, which includes cash and cash equivalents including cash items in the process of collection, deposit with other financial institutions, including corporate credit unions, balances with federal reserve banks and federal home loan banks, federal funds sold, and cash and cash equivalents on hand. Cash shall not include any balances serving as collateral for securities lending transactions;

(ii) obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality or a government sponsored enterprise of the United States or of a state or political subdivision thereof;

(iii) loans secured by a deposit or share of a member;

(iv) loans secured by an interest in real property which is (or from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this item, residential real property shall include single or multi-family dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile

homes not used on a transient basis;

(v) property acquired through the liquidation of defaulted loans described in item (iv) of this clause;

(vi) any regular or residual interest in a REMIC, as such term is defined in section 860D of the internal revenue code, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding items of this clause, except that if ninety-five percent or more of the assets of such REMIC are assets described in items (i) through (v) of this clause, the entire interest in the REMIC shall qualify;

(vii) any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in item (iv) of this clause and any collateralized mortgage obligation, the security for which consists primarily of mortgage loans that maintain as security the type of property described in item (iv) of this clause;

(viii) certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations;

(ix) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities;

(x) loans made for the payment of expenses of college or university education or vocational training;

(xi) property used by the taxpayer in support of business which consists principally of acquiring the savings of the public and investing in loans; and

(xii) loans for which the taxpayer is the creditor and which are wholly secured by loans described in item (iv) of this clause.

(xiii) The value of accrued interest receivable and any loss-sharing commitment or other loan guaranty by a governmental agency will be considered part of the basis in the loans to which the accrued interest

or loss protection applies.

(B) At the election of the taxpayer, the percentage specified in clause (A) of this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year. The taxpayer can elect to compute an average using the assets measured on the first day of the taxable year and on the last day of each subsequent quarter, or month or day during the taxable year. This election may be made annually.

(C) For purposes of item (iv) of clause (A) of this subparagraph, if a multifamily structure securing a loan is used in part for nonresidential use purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds eighty percent of the property's planned use (measured, at the taxpayer's election, by using square footage or gross rental revenue, and determined as of the time the loan is made).

(D) For purposes of item (iv) of clause (A) of this subparagraph, loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such three year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under item (vi) of clause (A) of this subparagraph, any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding item under principles similar to the principle of such item (vi), except that if such REMICs are part of a tiered structure, they shall be treated as one REMIC for purposes of such item (vi).

(3) For purposes of this paragraph, a "thrift institution" is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(s) Subtraction modification for community banks and small thrifts.

(1) A taxpayer that is a qualified community bank as defined in subparagraph two of this paragraph or a small thrift institution as defined in subparagraph two-a of this paragraph shall be allowed a deduction in computing entire net income equal to the amount computed

under subparagraph three of this paragraph.

(2) To be a qualified community bank, a taxpayer must satisfy the following conditions.

(A) It is a bank or trust company organized under or subject to the provisions of article three of the banking law or a comparable provision of the laws of another state, or a national banking association.

(B) The average value during the taxable year of the assets of the taxpayer, or, if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section two hundred ten-C of this article, must not exceed eight billion dollars.

(2-a) To be a small thrift institution, a taxpayer must satisfy the following conditions.

(A) It is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(B) The average value during the taxable year of the assets of the taxpayer, or, if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section two hundred ten-C of this article, must not exceed eight billion dollars.

(3)(A) The subtraction modification shall be computed as follows:

(i) Multiply the taxpayer's net interest income from loans during the taxable year by a fraction, the numerator of which is the gross interest income during the taxable year from qualifying loans and the denominator of which is the gross interest income during the taxable year from all loans.

(ii) Multiply the amount determined in clause (i) by fifty percent. This product is the amount of the deduction allowed under this paragraph.

(B)(i) Net interest income from loans shall mean gross interest income from loans less gross interest expense from loans. Gross interest expense from loans is determined by multiplying gross interest expense by a fraction, the numerator of which is the average total value of loans owned by the thrift institution or community bank during the taxable year and the denominator of which is the average total assets of the thrift institution or community bank during the taxable year.

(ii) Measurement of assets. (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is

required by the banking regulator of the taxpayers included in the combined return. In addition, total assets includes leased real property that is not properly reflected on a balance sheet.

(II) Assets will only be included if the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the taxpayer's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

(III) Tangible real and personal property, such as buildings, land, machinery, and equipment shall be valued at cost. Leased real property that is not properly reflected on that balance sheet will be valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

(IV) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

(C) A qualifying loan is a loan that meets the conditions specified in subclause (i) of this clause and subclause (ii) of this clause.

(i) The loan is originated by the qualified community bank or small thrift institution or purchased by the qualified community bank or small thrift institution immediately after its origination in connection with a commitment to purchase made by the bank or thrift institution prior to the loan's origination.

(ii) The loan is a small business loan or a residential mortgage loan, the principal amount of which loan is five million dollars or less, and either the borrower is located in this state as determined under section two hundred ten-A of this article and the loan is not secured by real property, or the loan is secured by real property located in New York.

(iii) A loan that meets the definition of a qualifying loan in a prior taxable year (including years prior to the effective date of this paragraph) remains a qualifying loan in taxable years during and after which such loan is acquired by another corporation in the taxpayer's combined reporting group under section two hundred ten-C of this article.

(t) A small thrift institution or a qualified community bank, as

defined in paragraph (s) of this subdivision, that maintained a captive REIT on April first, two thousand fourteen shall utilize a REIT subtraction equal to one hundred sixty percent of the dividends paid deductions allowed to that captive REIT for the taxable year for federal income tax purposes and shall not be allowed to utilize the subtraction modification for qualified residential loan portfolios under paragraph (r) of this subdivision or the subtraction modification for community banks and small thrifts under paragraph (s) of this subdivision in any tax year in which such thrift institution or community bank maintains that captive REIT.

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

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

12. The term elected or appointed officer shall include the chairman, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, and also any other officer, irrespective of his title, who is charged with and performs any of the regular functions of any such officer, unless the total compensation of such officer is derived exclusively from the receipt of commissions. A director shall be considered an elected or appointed officer only if he performs duties ordinarily performed by an officer.

§ 209. Imposition of tax; exemptions. 1. (a) For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, or of deriving receipts from activity in this state, for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a franchise tax, upon the basis of its business income base, or upon such other basis as may be applicable as hereinafter provided, for such fiscal or calendar year or part thereof, on a report which shall be filed, except as hereinafter provided, on or before the fifteenth day of March next succeeding the close of each such year, for taxable years beginning before January first, two thousand sixteen, and on or before the fifteenth day of April next succeeding the close of each such year, for taxable years beginning on or after January first, two thousand sixteen, or, in the case of a corporation which reports on the basis of a fiscal year, within two and one-half months after the close of such fiscal year, for taxable years beginning before January first, two thousand sixteen, and on or before the fifteenth day of the fourth month after the close of such fiscal year, for taxable years beginning on or after January first, two thousand sixteen, and shall be paid as hereinafter provided.

(b) A corporation is deriving receipts from activity in this state if it has receipts within this state of one million dollars or more in the taxable year. For purposes of this section, the term "receipts" means the receipts that are subject to the apportionment rules set forth in section two hundred ten-A of this article, and the term "receipts within

this state" means the receipts included in the numerator of the apportionment factor determined under section two hundred ten-A of this article. For purposes of this paragraph, receipts from processing credit card transactions for merchants include merchant discount fees received by the corporation.

(c) A corporation is doing business in this state if (i) it has issued credit cards to one thousand or more customers who have a mailing address within this state as of the last day of its taxable year, (ii) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in this state to whom the corporation remitted payments for credit card transactions during the taxable year, or (iii) the sum of the number of customers described in subparagraph (i) of this paragraph plus the number of locations covered by its contracts described in subparagraph (ii) of this paragraph equals one thousand or more. As used in this subdivision, the term "credit card" includes bank, credit, travel and entertainment cards.

(d)(i) A corporation with less than one million dollars but at least ten thousand dollars of receipts within this state in a taxable year that is part of a unitary group that meets the ownership test under section two hundred ten-C of this article is deriving receipts from activity in this state if the receipts within this state of the members of the unitary group that have at least ten thousand dollars of receipts within this state in the aggregate meet the threshold set forth in paragraph (b) of this subdivision.

(ii) A corporation that does not meet any of the thresholds set forth in paragraph (c) of this subdivision but has at least ten customers, or locations, or customers and locations, as described in paragraph (c) of this subdivision, and is part of a unitary group that meets the ownership test under section two hundred ten-C of this article is doing business in this state if the number of customers, locations, or customers and locations, within this state of the members of the unitary group that have at least ten customers, locations, or customers and locations, within this state in the aggregate meets any of the thresholds set forth in paragraph (c) of this subdivision.

(iii) For purposes of this paragraph, any corporation described in paragraph (c) of subdivision two of section two hundred ten-C of this

article shall not be considered.

(e) At the end of each year, the commissioner shall review the cumulative percentage change in the consumer price index. The commissioner shall adjust the receipt thresholds set forth in this subdivision if the consumer price index has changed by ten percent or more since January first, two thousand fifteen, or since the date that the thresholds were last adjusted under this subdivision. The thresholds shall be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds shall be rounded to the nearest one thousand dollars. As used in this paragraph, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor. Any adjustment shall apply to tax periods that begin after the adjustment is made.

(f) If a partnership is doing business, employing capital, owning or leasing property in this state, maintaining an office in the state, or deriving receipts from activity in this state, any corporation that is a partner in such partnership shall be subject to tax under this article as described in the regulations of the commissioner.

2. A foreign corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, or deriving receipts from activity in this state, for the purposes of this article, by reason of (a) the maintenance of cash balances with banks or trust companies in this state, or (b) the ownership of shares of stock or securities kept in this state, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in this state by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the keeping of books or records of a

corporation in this state if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) any combination of the foregoing activities.

2-a. An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, maintaining an office in this state, or deriving receipts from activity in this state, for the purposes of this article, if its activities in this state are limited solely to (a) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (b) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (c) any combination of activities described in paragraphs (a) and (b) of this subdivision. An alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause (iv) of the opening paragraph of subdivision nine of section two hundred eight of this article shall not be subject to tax under this article for that taxable year. For purposes of this article, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory or commonwealth of the United States.

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

4. Corporations liable to tax under sections one hundred eighty-three

to one hundred eighty-four-a, inclusive, corporations taxable under article thirty-three of this chapter, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, a captive REIT or a captive RIC filing a combined return under subdivision (f) of section fifteen hundred fifteen of this chapter, and housing companies organized and operating pursuant to the provisions of article two or article five of the private housing finance law and housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law shall not be subject to tax under this article.

5. For any taxable year of a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either paragraph (a) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greater, and shall not be subject to any tax under article thirty-three of this chapter except for a captive REIT required to file a combined return under subdivision (f) of section fifteen hundred fifteen of this chapter. In the case of such a real estate investment trust, including a captive REIT as defined in section two of this chapter, the term "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code, subject to the modifications required by subdivision nine of section two hundred eight of this article.

6. For any taxable year of a DISC, not exempt from tax under paragraph (i) of subdivision nine of section two hundred eight of this article, the taxes imposed by subdivision one of this section shall be computed only under either paragraph (b) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greater.

7. For any taxable year, beginning on or after January first, nineteen hundred eighty of a regulated investment company, as defined in section

eight hundred fifty-one of the internal revenue code, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under either paragraph (a) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greater, and shall not be subject to any tax under article thirty-three of this chapter except for a captive RIC required to file a combined return under subdivision (f) of section fifteen hundred fifteen of this chapter. In the case of such a regulated investment company, including a captive RIC as defined in section two of this chapter, the term "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two, as modified by section eight hundred fifty-five, of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of such code subject to the modifications required by subdivision nine of section two hundred eight of this chapter.

8. For any taxable year beginning on or after January first, two thousand six, a corporation that is no longer doing business, employing capital, or owning or leasing property, or deriving receipts from activity in this state in a corporate or organized capacity that has filed a final tax return with the department for the last tax year it was doing business and has no outstanding tax liability for such final tax return or any tax return for prior tax years shall be exempt from all taxes imposed by paragraph (d) of subdivision one of section two hundred ten of this article for tax years following the last year such corporation was doing business.

9. For any taxable year beginning on or after January first, nineteen hundred eighty-seven, an organization described in paragraph two or twenty-five of subdivision (c) of section five hundred one of the internal revenue code of nineteen hundred eighty-six shall be exempt from all taxes imposed by this article.

10. QSSS. For exemption from tax of a qualified subchapter S subsidiary, see paragraph (k) of subdivision nine of section two hundred eight of this article.

11. Except as provided in subparagraph eighteen of paragraph (a) of subdivision nine of section two hundred eight of this article, a corporation that is a qualified entity of a New York state innovation hot spot shall be subject only to the fixed dollar minimum tax under paragraph (d) of subdivision one of section two hundred ten of this article, as provided in section thirty-eight of this chapter.

12. All farmers', fruit growers' and other like agricultural corporations organized and operated on a co-operative basis for the purposes expressed in and as provided under the co-operative corporations law of the state of New York, whether or not such corporations have capital stock, shall be exempt from taxation under the provisions of this article.

§ 209-B. Metropolitan transportation business tax surcharge. 1. (a) For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of its taxable year, there is hereby imposed on every corporation, other than a New York S corporation, subject to tax under section two hundred nine of this article, or any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any such corporation, a tax surcharge, in addition to the tax imposed under section two hundred nine of this article, to be computed at the rate of seventeen percent of the tax imposed under such section for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three and before January first, two thousand fifteen after the deduction of any credits otherwise allowable under this article, at the rate of twenty-five and six-tenths percent of the tax imposed under such section for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen before the deduction of any credits otherwise allowable under this article, at the

rate determined by the commissioner pursuant to paragraph (f) of this subdivision of the tax imposed under such section, for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand twenty-four before the deduction of any credits otherwise allowable under this article, and at the rate of thirty percent of the tax imposed under such section for taxable years beginning on or after January first, two thousand twenty-four before the deduction of any credits otherwise allowable under this article. However, such rate of tax surcharge shall be applied only to that portion of the tax imposed under section two hundred nine of this article before the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district; and provided, further, the surcharge computed on a combined report shall include a surcharge on the fixed dollar minimum tax for each member of the combined group subject to the surcharge under this subdivision.

(b) A corporation is deriving receipts from activity in the metropolitan commuter transportation district if it has receipts within the metropolitan commuter transportation district of one million dollars or more in a taxable year. For purposes of this section, the term "receipts" means the receipts that are subject to the apportionment rules set forth in section two hundred ten-A of this article, and the term "receipts within the metropolitan commuter transportation district" means the receipts included in the numerator of the apportionment factor determined under subdivision two of this section. For purposes of this paragraph, receipts from processing credit card transactions for merchants include merchant discount fees received by the corporation.

(c) A corporation is doing business in the metropolitan commuter transportation district if (i) it has issued credit cards to one thousand or more customers who have a mailing address within the metropolitan commuter transportation district as of the last day of its taxable year, (ii) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in the metropolitan commuter transportation district to whom the corporation remitted payments for credit card transactions during the taxable year, or (iii) the sum of the number of customers described in subparagraph (i) of this paragraph plus the

number of locations covered by its contracts described in subparagraph (ii) of this paragraph equals one thousand or more. As used in this paragraph, the term "credit card" includes bank, credit, travel and entertainment cards.

(d)(i) A corporation with less than one million dollars but at least ten thousand dollars of receipts within the metropolitan commuter transportation district in a taxable year that is part of a unitary group that meets the ownership test under section two hundred ten-C of this article is deriving receipts from activity in the metropolitan commuter transportation district if the receipts within the metropolitan commuter transportation district of the members of the unitary group that have at least ten thousand dollars of receipts within the metropolitan commuter transportation district in the aggregate meet the threshold set forth in paragraph (b) of this subdivision.

(ii) A corporation that does not meet any of the thresholds set forth in paragraph (c) of this subdivision but has at least ten customers, or locations, or customers and locations, as described in paragraph (c), and is part of a unitary group that meets the ownership test under section two hundred ten-C of this article is doing business in the metropolitan commuter transportation district if the number of customers, locations, or customers and locations, within the metropolitan commuter transportation district of the members of the unitary group that have at least ten customers, locations, or customers and locations, within the metropolitan commuter transportation district in the aggregate meets any of the thresholds set forth in paragraph (c) of this subdivision.

(iii) For purposes of this paragraph, any corporation described in paragraph (c) of subdivision two of section two hundred ten-C of this article shall not be considered.

(e) At the end of each year, the commissioner shall review the cumulative percentage change in the consumer price index. The commissioner shall adjust the receipt thresholds set forth in this subdivision if the consumer price index has changed by ten percent or more since the January first, two thousand fifteen or since the date that the thresholds were last adjusted under this subdivision. The thresholds shall be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds shall be

rounded to the nearest one thousand dollars. As used in this paragraph, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor. Any adjustment shall apply to tax periods that begin after the adjustment is made.

(f) The commissioner shall determine the rate of tax for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand twenty-four by adjusting the rate for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen as necessary to ensure that the receipts attributable to such surcharge, as impacted by part A of chapter fifty-nine of the laws of two thousand fourteen, will meet and not exceed the financial projections for state fiscal year two thousand sixteen-two thousand seventeen, as reflected in state fiscal year two thousand fifteen-two thousand sixteen enacted budget. The commissioner shall annually determine the rate thereafter, for taxable years beginning before January first, two thousand twenty-four, using the financial projections for the state fiscal year that commences in the year for which the rate is to be set as reflected in the enacted budget for the fiscal year commencing on the previous April first.

2. The portion of the taxpayer's business activity carried on within the metropolitan commuter transportation district shall be determined by multiplying the tax imposed under section two hundred nine of this article before the deduction of any credits otherwise allowable under this article by a percentage to be determined as follows:

(a) ascertaining the percentage which the average value of the taxpayer's real and tangible personal property, whether owned or rented to it, within the metropolitan commuter transportation district during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property, whether owned or rented to it, within the state during such period; provided that the term "value of the taxpayer's real and tangible personal property" shall mean the adjusted bases of such properties for federal income tax purposes (except that in the case of rented property such value shall mean the product of (i) eight and (ii) the gross rents payable for the rental of such property during the taxable year); provided, however, that the

taxpayer may make a one-time, revocable election to use fair market value as the value of all of its real and tangible personal property, provided that such election is made on or before the due date for filing a report under section two hundred eleven for the taxpayer's first taxable year commencing on or after January first, two thousand fifteen and provided that such election shall not apply to any taxable year with respect to which the taxpayer is included on a combined report unless each of the taxpayers included on such report has made such an election which remains in effect for such year;

(b) ascertaining the percentage of the taxpayer's receipts within the metropolitan commuter transportation district pursuant to the method prescribed in section two hundred ten-A of this article, except that

(i) the numerator of the apportionment fraction under such section two hundred ten-A shall be the denominator of the apportionment fraction under this paragraph,

(ii) the numerator of the apportionment fraction under this paragraph shall be determined by applying the rules in such section two hundred ten-A relating to the numerator of the apportionment fraction as if those rules referenced the metropolitan commuter transportation district rather than this state,

(iii) to the extent that a provision in such section two hundred ten-A provides that eight percent of the receipts specified in that provision should be included in the numerator of the apportionment fraction, ninety percent of such eight percent amount shall be considered within the metropolitan commuter transportation district and one hundred percent of such eight percent amount shall be considered to be within the state, and

(iv) to the extent that a provision in such section two hundred ten-A of this article provides that the receipts specified in that provision shall not be included in the numerator of the apportionment fraction under such section two hundred ten-A, such receipts shall not be included in determining the portion of the taxpayer's business activity carried on within the metropolitan commuter transportation district;

(c) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period, of employees within the metropolitan commuter transportation district, except general executive officers, to the total wages, salaries and

other personal service compensation, similarly computed, during such period, of all the taxpayer's employees within the state, except general executive officers; and

(d) adding together the percentages so determined and dividing the result by the number of percentages.

3. A corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office, or deriving receipts from activity in the metropolitan commuter transportation district, for the purposes of this section, by reason of (a) the maintenance of cash balances with banks or trust companies in the metropolitan commuter transportation district, or (b) the ownership of shares of stock or securities kept in the metropolitan commuter transportation district, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in the metropolitan commuter transportation district by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in the metropolitan commuter transportation district, and does not employ capital or own or lease property in the metropolitan commuter transportation district, or (e) the keeping of books or records of a corporation in the metropolitan commuter transportation district if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in the metropolitan commuter transportation district, or (f) any combination of the foregoing activities.

4. Notwithstanding any contrary provisions of state or local law, the tax surcharge imposed under this section shall not be allowed as a deduction in the computation of any tax imposed under this chapter. Furthermore, the credits otherwise allowable under this article shall

not be allowed against the tax surcharge imposed by this section.

5. The provisions concerning reports under sections two hundred ten-C and two hundred eleven shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a report covering the tax surcharge imposed by this section, such automatic extension shall be allowed only if a taxpayer files with the commissioner an application for extension in such form as said commissioner may prescribe by regulation and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax surcharge required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's return for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months; provided, however, that in no event shall such amount be less than the product of the following three amounts: (1) the tax surcharge rate in effect for the taxable year pursuant to subdivision one of this section, (2) the fixed dollar minimum applicable to such taxpayer as determined under paragraph (d) of subdivision one of section two hundred ten of this chapter for the taxable year, and (3) the percentage determined under subdivision two of this section for the preceding taxable year, unless the taxpayer was not subject to the tax surcharge imposed pursuant to this section with respect to such year, in which case such percentage shall be deemed to be one hundred percent. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the report is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable are applicable to the tax surcharge imposed by this section.

6. The term metropolitan commuter transportation district as used in this section shall be defined pursuant to section twelve hundred sixty-two of the public authorities law.

§ 209-C. Gift for fish and wildlife management. Effective for any tax year commencing on or after January first, nineteen hundred ninety-three, a taxpayer in any taxable year may elect to contribute to the conservation fund for fish and wildlife management purposes. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such taxpayer. The tax commission shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the conservation fund and used only for those purposes enumerated in section eighty-three of the state finance law.

§ 209-D. Gift for breast cancer research and education. Effective for any tax year commencing on or after January first, nineteen hundred ninety-six, a taxpayer in any taxable year may elect to contribute to the support of the breast cancer research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the breast cancer research and education fund and shall be used only for those purposes enumerated in section ninety-seven-yy of the state finance law.

§ 209-E. Gift for prostate and testicular cancer research and education. Effective for any tax year commencing on or after January first, two thousand four, a taxpayer in any taxable year may elect to contribute to the support of the New York State prostate and testicular

cancer research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the New York State prostate and testicular cancer research and education fund and shall be used only for those purposes enumerated in section ninety-five-e of the state finance law.

§ 209-F. Gift for the World Trade Center memorial foundation.

Effective for any tax year commencing on or after January first, two thousand five, a taxpayer in any taxable year may elect to contribute to the support of the World Trade Center memorial foundation fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the World Trade Center memorial foundation fund and shall be used only for those purposes enumerated in section seventy-nine of the state finance law.

§ 209-G. Gift for volunteer firefighter and volunteer emergency services workers recruitment and retention. Effective for any tax year commencing on or after the effective date of this section, a taxpayer in any taxable year may elect to contribute to the support of the volunteer firefighter and volunteer emergency services workers recruitment and retention fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the volunteer firefighter and volunteer emergency services recruitment and retention fund and shall be used only for those

purposes enumerated in section ninety-nine-q of the state finance law.

§ 209-H. Gift for honor and remembrance of veterans. Effective for any tax year commencing on or after January first, two thousand thirteen, any taxpayer in any taxable year may elect to contribute to the veterans remembrance and cemetery maintenance and operation fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the veterans remembrance and cemetery maintenance and operation fund and used only for those purposes enumerated in section ninety-seven-mmmm of the state finance law.

§ 209-I. Gift for women's cancers education and prevention. A taxpayer in any taxable year may elect to contribute to the support of the women's cancers education and prevention fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the women's cancers education and prevention fund and shall be used only for those purposes enumerated in section ninety-seven-lxxx of the state finance law.

§ 209-J. Gift for New York state veterans' homes. Effective for any tax year commencing on or after January first, two thousand seventeen, any taxpayer in any taxable year may elect to contribute to the veterans' home assistance fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution.

Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the veterans' home assistance fund and used only for those purposes enumerated in section eighty-one of the state finance law.

§ 209-K. Gift to the love your library fund. Effective for any tax year commencing on or after January first, two thousand eighteen, a taxpayer in any taxable year may elect to contribute to the love your library fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the love your library fund and shall be used only for those purposes enumerated in section ninety-nine-l of the state finance law, as added by chapter three hundred three of the laws of two thousand four.

*** § 209-L. Gift for ALS research and education.** Effective for any tax year commencing on or after January first, two thousand nineteen, a taxpayer in any taxable year may elect to contribute to the support of the New York state ALS (Amyotrophic Lateral Sclerosis) research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the New York state ALS research and education fund and shall be used only for those purposes enumerated in section ninety-five-i of the state finance law.

* NB There are 3 § 209-L's

*** § 209-L. Gift for lupus education and prevention.** A taxpayer in any taxable year may elect to contribute to the support of the lupus

education and prevention fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the lupus education and prevention fund and shall be used only for those purposes enumerated in section ninety-seven-rrrr of the state finance law.

* NB There are 3 § 209-L's

*** § 209-L. Gift for military families.** Effective for any tax year commencing on or after January first, two thousand eighteen, a taxpayer in any taxable year may elect to contribute to the support of the military family relief fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the military family relief fund and shall be used only for those purposes enumerated in section eighty-nine-i of the state finance law.

* NB There are 3 § 209-L's

*** § 209-M. Gift for leukemia, lymphoma and myeloma research, education and treatment.** Effective for any tax year commencing on or after January first, two thousand twenty, a taxpayer in any taxable year may elect to contribute to the support of the leukemia, lymphoma and myeloma research, education and treatment fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the leukemia, lymphoma and myeloma research, education and treatment fund and shall be used only for those purposes enumerated in section ninety-seven-ssss of

the state finance law.

* NB There are 2 § 209-M's

*** § 209-M. Gift for home delivered meals for seniors.** Effective for any tax year commencing on or after January first, two thousand nineteen, a taxpayer in any taxable year may elect to contribute to the support of the senior wellness in nutrition fund for the purpose of providing home delivered meals to seniors. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such taxpayer. The commissioner shall include space on the business franchise income tax return, entitled "Home Delivered Meals for Seniors", to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the senior wellness in nutrition fund and shall only be used for those purposes enumerated in section ninety-one-g of the state finance law.

* NB There are 2 § 209-M's

*** § 209-N. Retired and rescued thoroughbred race horse aftercare.** Effective for any tax year commencing on or after the effective date of this section, a taxpayer in any taxable year may elect to contribute to the New York state thoroughbred breeding and development fund established pursuant to section two hundred fifty-two of the racing, pari-mutuel wagering and breeding law, for the purpose of funding the operation of retired race horse aftercare facilities. Any contributions made to the thoroughbred breeding and development fund pursuant to this section shall be deposited into a dedicated account managed by the fund, which shall solely be used for funding the operation of retired race horse aftercare facilities, with a preference for those organizations that are accredited horse retirement and rescue programs. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be

credited to the New York state thoroughbred retirement race horse and aftercare fund and shall be used only for those purposes set forth in paragraph h of subdivision two of section two hundred fifty-four of the racing, pari-mutuel wagering and breeding law.

* NB Effective January 1, 2022

*** § 209-0. Retired and rescued standardbred race horse aftercare.**

Effective for any tax year commencing on or after the effective date of this section, a taxpayer in any taxable year may elect to contribute to the agriculture and New York horse breeding and development fund established pursuant to section three hundred thirty of the racing, pari-mutuel wagering and breeding law, for the purpose of funding the operation of retired race horse aftercare facilities. Any contributions made to the agriculture and New York state horse breeding development fund pursuant to this section shall be deposited into a dedicated account managed by the fund, which shall solely be used for funding the operation of retired race horse aftercare facilities, with a preference for those organizations that are accredited horse retirement and rescue programs. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the New York state standardbred retirement race horse and aftercare fund and shall be used only for those purposes enumerated in paragraph j of subdivision one of section three hundred thirty-two of the racing, pari-mutuel wagering and breeding law.

* NB Effective January 1, 2022

§ 209-P. Gift for Lyme and tick-borne diseases education, research and prevention. Effective for any tax year commencing on or after January first, two thousand twenty-two, a taxpayer in any taxable year may elect to contribute to the support of the Lyme and tick-borne diseases education, research and prevention. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by

such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the Lyme and tick-borne diseases education, research and prevention fund and shall only be used for those purposes enumerated in section ninety-five-k of the state finance law.

§ 209-Q. Gift for diabetes research and education. Effective for any tax year commencing on or after the effective date of this section, a taxpayer in any taxable year may elect to contribute to the support of the diabetes research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the diabetes research and education fund and shall be used only for those purposes enumerated in section eighty-nine-k of the state finance law.

§ 210. Computation of tax. 1. The tax imposed by subdivision one of section two hundred nine of this chapter shall be: (A) in the case of each taxpayer other than a New York S corporation or a qualified homeowners association, the highest of the amounts prescribed in paragraphs (a), (b), and (d) of this subdivision, (B) in the case of each New York S corporation, the amount prescribed in paragraph (d) of this subdivision, and (C) in the case of a qualified homeowners association, the highest of the amounts prescribed in paragraphs (a) and (b) of this subdivision. For purposes of this paragraph, the term "qualified homeowners association" means a homeowners association, as such term is defined in subsection (c) of section five hundred twenty-eight of the internal revenue code without regard to subparagraph (E) of paragraph one of such subsection (relating to elections to be taxed pursuant to such section), which has no homeowners association taxable income, as such term is defined in subsection (d) of such

section. Provided, however, that in the case of a small business taxpayer (other than a New York S corporation) as defined in paragraph (f) of this subdivision, for taxable years beginning before January first, two thousand sixteen, if the amount prescribed in such paragraph (b) is higher than the amount prescribed in such paragraph (a) solely by reason of the application of the rate applicable to small business taxpayers, then with respect to such taxpayer the tax referred to in the previous sentence shall be higher of the amounts prescribed in paragraphs (a) and (d) of this subdivision.

(a) Business income base. For taxable years beginning before January first, two thousand sixteen, the amount prescribed by this paragraph shall be computed at the rate of seven and one-tenth percent of the taxpayer's business income base. For taxable years beginning on or after January first, two thousand sixteen, the amount prescribed by this paragraph shall be six and one-half percent of the taxpayer's business income base. For taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand thirty for any taxpayer with a business income base for the taxable year of more than five million dollars, the amount prescribed by this paragraph shall be seven and one-quarter percent of the taxpayer's business income base. The taxpayer's business income base shall mean the portion of the taxpayer's business income apportioned within the state as hereinafter provided. However, in the case of a small business taxpayer, as defined in paragraph (f) of this subdivision, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (iv) of this paragraph and in the case of a manufacturer, as defined in subparagraph (vi) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vi) of this paragraph, and, in the case of a qualified emerging technology company, as defined in subparagraph (vii) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vii) of this paragraph.

(iv) for taxable years beginning before January first, two thousand sixteen, if the business income base is not more than two hundred ninety thousand dollars the amount shall be six and one-half percent of the business income base; if the business income base is more than two hundred ninety thousand dollars but not over three hundred ninety

thousand dollars the amount shall be the sum of (1) eighteen thousand eight hundred fifty dollars, (2) seven and one-tenth percent of the excess of the business income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars and (3) four and thirty-five hundredths percent of the excess of the business income base over three hundred fifty thousand dollars but not over three hundred ninety thousand dollars;

(v) if the taxable period to which subparagraph (iv) of this paragraph applies is less than twelve months, the amount prescribed by this paragraph shall be computed as follows:

(A) Multiply the business income base for such taxpayer by twelve;

(B) Divide the result obtained in (A) by the number of months in the taxable year;

(C) Compute an amount pursuant to subparagraph (iv) as if the result obtained in (B) were the taxpayer's business income base;

(D) Multiply the result obtained in (C) by the number of months in the taxpayer's taxable year;

(E) Divide the result obtained in (D) by twelve.

(vi) for taxable years beginning on or after January first, two thousand fourteen, the amount prescribed by this paragraph for a taxpayer that is a qualified New York manufacturer, shall be computed at the rate of zero percent of the taxpayer's business income base. The term "manufacturer" shall mean a taxpayer that during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. However, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity shall not be qualifying activities for a manufacturer under this subparagraph. Moreover, in the case of a combined report, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this paragraph, or any combination thereof. A taxpayer or, in the case of a combined report, a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group,

respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer that has property in New York that is described in clause (A) of subparagraph (i) of paragraph (b) of subdivision one of section two hundred ten-B of this article and either (I) the adjusted basis of such property for New York state tax purposes at the close of the taxable year is at least one million dollars or (II) all of its real and personal property is located in New York. A taxpayer or, in the case of a combined report, a combined group, that does not satisfy the principally engaged test may be a qualified New York manufacturer if the taxpayer or the combined group employs during the taxable year at least two thousand five hundred employees in manufacturing in New York and the taxpayer or the combined group has property in the state used in manufacturing, the adjusted basis of which for New York state tax purposes at the close of the taxable year is at least one hundred million dollars.

(vii) For a taxpayer that is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph (c) the amount prescribed by this paragraph shall be computed at the rate of 5.7 percent for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen, 5.5 percent for taxable years beginning on or after January first two thousand sixteen and before January first, two thousand eighteen, and 4.875 percent for taxable years beginning on or after January first, two thousand eighteen.

(viii) (A) In computing the business income base, taxpayers shall be allowed both a prior net operating loss conversion subtraction under this subparagraph and a net operating loss deduction under subparagraph (ix) of this paragraph. The prior net operating loss conversion subtraction computed under this subparagraph shall be applied against the business income base before the net operating loss deduction computed under subparagraph (ix) of this paragraph.

(B) Prior net operating loss conversion subtraction.

(1) Definitions.

(I) "Base year" means the last taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand fifteen.

(II) "Unabsorbed net operating loss" means the unabsorbed portion of net operating loss as calculated under paragraph (f) of subdivision nine of section two hundred eight of this article or subsection (k-1) of section fourteen hundred fifty-three of this chapter as such sections were in effect on December thirty-first, two thousand fourteen, that was not deductible in previous taxable years and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such sections, including any net operating loss sustained by the taxpayer during the base year.

(III) "Base year BAP" means the taxpayer's business allocation percentage as calculated under paragraph (a) of subdivision three of this section for the base year, or the taxpayer's allocation percentage as calculated under section fourteen hundred fifty-four of this chapter for purposes of calculating entire net income for the base year, as such sections were in effect on December thirty-first, two thousand fourteen.

(IV) "Base year tax rate" means the taxpayer's tax rate for the base year as calculated under this paragraph or subsection (a) of section fourteen hundred fifty-five of this chapter, as such provisions were in effect on December thirty-first, two thousand fourteen.

(2) The prior net operating loss conversion subtraction shall be calculated as follows:

(I) The taxpayer shall first calculate the tax value of its unabsorbed net operating loss for the base year. The value is equal to the product of (I) the amount of the taxpayer's unabsorbed net operating loss, (II) the taxpayer's base year BAP, and (III) the taxpayer's base year tax rate.

(II) The product determined under item (I) of this subclause is then divided by six and one-half percent, or in the case of a qualified New York manufacturer, five and seven-tenths percent. This result shall equal the taxpayer's prior net operating loss conversion subtraction pool.

(III) The taxpayer's prior net operating loss conversion subtraction for the taxable year shall equal one-tenth of its net operating loss conversion subtraction pool plus any amount of unused prior net

operating loss conversion subtraction from preceding taxable years. Provided, however, the prior net operating loss conversion subtraction of a small business corporation, as defined in paragraph (f) of this subdivision, as of the last day of the base year, shall not be subject to the one-tenth limitation in the previous sentence.

(IV) In lieu of the subtraction described in item (III) of this subclause, if the taxpayer so elects, the taxpayer's prior net operating loss conversion subtraction for the tax years beginning on or after January first, two thousand fifteen and before January first, two thousand seventeen shall equal in each year, not more than one-half of its net operating loss conversion subtraction pool until the pool is exhausted. If the pool is not exhausted at the end of such time period, the remainder of the pool shall be forfeited. The taxpayer shall make such revocable election on its first return for the tax year beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen by the due date for such return (determined with regard to extensions).

(3) Combined groups. (I) Where a taxpayer was properly included or required to be included in a combined report for the base year pursuant to section two hundred eleven of this article or a combined return under section fourteen hundred sixty-two of this chapter, as such sections were in effect on December thirty-first, two thousand fourteen, and the members of the combined group for the base year are the same as the members of the combined group for the taxable year immediately succeeding the base year, the combined group shall calculate its prior net operating loss conversion subtraction pool using the combined group's total unabsorbed net operating loss, base year BAP, and base year tax rate.

(II) If a combined group includes additional members in the taxable year immediately succeeding the base year that were not included in the combined group during the base year, each base year combined group and each taxpayer that filed separately in the base year but is included in the combined group in the taxable year succeeding the base year shall calculate its prior net operating loss conversion subtraction pool, and the sum of the pools shall be the combined prior net operating loss conversion subtraction pool of the combined group.

(III) If a taxpayer was properly included in a combined report for the

base year and files a separate report in a subsequent taxable year, then the amount of remaining prior net operating loss conversion subtraction allowed to the taxpayer filing such separate report shall be proportionate to the amount that such taxpayer contributed to the prior net operating loss conversion subtraction pool on a combined basis, and the remaining prior net operating loss conversion subtraction allowed to the remaining members of the combined group shall be reduced accordingly.

(IV) If a taxpayer filed a separate report for the base year and is properly included in a combined report in a subsequent taxable year, then the prior net operating loss conversion subtraction pool of the combined group shall be increased by the amount of the remaining net operating loss conversion subtraction allowed to the taxpayer at the time the taxpayer is properly included in the combined group.

(4) The prior net operating loss conversion subtraction may be used to reduce the taxpayer's tax on the apportioned business income base to the higher of the tax on the capital base under paragraph (b) of this subdivision or the fixed dollar minimum under paragraph (d) of this subdivision. Unless the taxpayer has made the election provided for in item (IV) of subclause two of this clause, any amount of unused subtraction shall be carried forward to subsequent tax year or years until the prior net operating loss conversion subtraction pool is exhausted, but for no longer than twenty taxable years, or the taxable year beginning on or after January first, two thousand thirty-five but before January first, two thousand thirty-six, whichever comes first. Such amount carried forward shall not be subject to the one-tenth limitation for the subsequent tax year or years. However, if the taxpayer elects to compute its prior net operating loss conversion subtraction pursuant to item (IV) of subclause two of this clause, the taxpayer shall not carry forward any unused amount of such subtraction to any tax year beginning on or after January first, two thousand seventeen.

(ix) Net operating loss deduction. In computing the business income base, a net operating loss deduction shall be allowed. A net operating loss deduction is the amount of net operating loss or losses from one or more taxable years that are carried forward or carried back to a particular taxable year. A net operating loss is the amount of a

business loss incurred in a particular tax year multiplied by the apportionment factor for that year as determined under section two hundred ten-A of this article. The maximum net operating loss deduction that is allowed in a taxable year is the amount that reduces the taxpayer's tax on the apportioned business income base to the higher of the tax on the capital base or the fixed dollar minimum. Such deduction and loss are determined in accordance with the following:

(1) Such net operating loss deduction is not limited to the amount allowed under section one hundred seventy-two of the internal revenue code or the amount that would have been allowed if the taxpayer had not made an election under subchapter S of chapter one of the internal revenue code.

(2) Such net operating loss deduction shall not include any net operating loss incurred during any taxable year beginning prior to January first, two thousand fifteen, or during any taxable year in which the taxpayer was not subject to the tax imposed by this article.

(3) A taxpayer that files as part of a federal consolidated return but on a separate basis for purposes of this article must compute its deduction and loss as if it were filing on a separate basis for federal income tax purposes.

(4) A net operating loss may be carried back three taxable years preceding the taxable year of the loss ("the loss year"). However no loss can be carried back to a taxable year beginning before January first, two thousand fifteen. The loss is first carried to the earliest of the three taxable years. If it is not entirely used in that year, it is carried to the second taxable year preceding the loss year, and any remaining amount is carried to the taxable year immediately preceding the loss year. Any unused amount of loss then remaining may be carried forward for as many as twenty taxable years following the loss year. Losses carried forward are carried forward first to the taxable year immediately following the loss year, then to the second taxable year following the loss year, and then to the next immediately subsequent taxable year or years until the loss is used up or the twentieth taxable year following the loss year, whichever comes first.

(5) Such net operating loss deduction shall not include any net operating loss incurred during a New York S year; provided, however, a New York S year must be treated as a taxable year for purposes of

determining the number of taxable years to which a net operating loss may be carried forward.

(6) Where there are two or more apportioned net operating losses, or portions thereof, carried back or carried forward to be deducted in one particular tax year from apportioned business income, the earliest apportioned loss incurred must be applied first.

(7) A taxpayer may elect to waive the entire carryback period with respect to a net operating loss. Such election must be made on the taxpayer's original timely filed return (determined with regard to extensions) for the taxable year of the net operating loss for which the election is to be in effect. Once an election is made for a taxable year, it shall be irrevocable for that taxable year. A separate election must be made for each loss year. This election applies to all members of a combined group.

(b) Capital base. (1) (i) The amount prescribed by this paragraph shall be computed at .15 percent for each dollar of the taxpayer's total business capital, or the portion thereof apportioned within the state as hereinafter provided for taxable years beginning before January first, two thousand sixteen. However, in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be .04 percent until taxable years beginning on or after January first, two thousand twenty and zero percent for taxable years beginning on or after January first, two thousand twenty-one. The rate of tax for subsequent tax years shall be as follows: .125 percent for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand seventeen; .100 percent for taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen; .075 percent for taxable years beginning on or after January first, two thousand eighteen and before January first, two thousand nineteen; .050 percent for taxable years beginning on or after January first, two thousand nineteen and before January first, two thousand twenty; .025 percent for taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one; and .1875 percent for years beginning on or after January first, two thousand twenty-one and before January first, two thousand thirty, and zero percent for taxable years beginning on or after January first, two thousand thirty. Provided

however, for taxable years beginning on or after January first, two thousand twenty-one, the rate of tax for a small business as defined in paragraph (f) of this subdivision shall be zero percent. The rate of tax for a qualified New York manufacturer shall be .132 percent for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen, .106 percent for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand seventeen, .085 percent for taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen; .056 percent for taxable years beginning on or after January first, two thousand eighteen and before January first, two thousand nineteen; .038 percent for taxable years beginning on or after January first, two thousand nineteen and before January first, two thousand twenty; .019 percent for taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one; and zero percent for years beginning on or after January first, two thousand twenty-one. (ii) In no event shall the amount prescribed by this paragraph exceed three hundred fifty thousand dollars for qualified New York manufacturers and for all other taxpayers five million dollars.

(2) For purposes of subparagraph one of this paragraph, the term "manufacturer" shall mean a taxpayer that during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. Moreover, for purposes of computing the capital base in a combined report, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this subparagraph, or any combination thereof. A taxpayer or, in the case of a combined report, a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer that has property in New York that is

described in clause (A) of subparagraph (i) of paragraph (b) of subdivision one of section two hundred ten-B of this article and either (i) the adjusted basis of that property for New York state tax purposes at the close of the taxable year is at least one million dollars or (ii) all of its real and personal property is located in New York. In addition, a "qualified New York manufacturer" means a taxpayer that is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph. A taxpayer or, in the case of a combined report, a combined group, that does not satisfy the principally engaged test may be a qualified New York manufacturer if the taxpayer or the combined group employs during the taxable year at least two thousand five hundred employees in manufacturing in New York and the taxpayer or the combined group has property in the state used in manufacturing, the adjusted basis of which for New York state tax purposes at the close of the taxable year is at least one hundred million dollars.

(d) Fixed dollar minimum. (1) (A) The amount prescribed by this paragraph for New York S corporations, other than New York S corporations that are qualified New York manufacturers or qualified emerging technology companies, will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 25
more than \$100,000 but not over \$250,000	\$ 50
more than \$250,000 but not over \$500,000	\$ 175
more than \$500,000 but not over \$1,000,000	\$ 300
more than \$1,000,000 but not over \$5,000,000	\$1,000
more than \$5,000,000 but not over \$25,000,000	\$3,000
Over \$25,000,000	\$4,500

(B) Provided further, the amount prescribed by this paragraph for New York S corporations that are qualified New York manufacturers, as defined in subparagraph (vi) of paragraph (a) of this subdivision, and for New York S corporations that are qualified emerging technology companies under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten

million dollar limitation expressed in subparagraph one of such paragraph (c), will be determined in accordance with the following tables.

For taxable years beginning on or after January 1, 2015 and before January 1, 2016:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 22
more than \$100,000 but not over \$250,000	\$ 44
more than \$250,000 but not over \$500,000	\$ 153
more than \$500,000 but not over \$1,000,000	\$ 263
more than \$1,000,000 but not over \$5,000,000	\$ 877
more than \$5,000,000 but not over \$25,000,000	\$2,631
Over \$25,000,000	\$3,947

For taxable years beginning on or after January 1, 2016 and before January 1, 2018:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 21
more than \$100,000 but not over \$250,000	\$ 42
more than \$250,000 but not over \$500,000	\$ 148
more than \$500,000 but not over \$1,000,000	\$ 254
more than \$1,000,000 but not over \$5,000,000	\$ 846
more than \$5,000,000 but not over \$25,000,000	\$2,538
Over \$25,000,000	\$3,807

For taxable years beginning on or after January 1, 2018:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 19
more than \$100,000 but not over \$250,000	\$ 38
more than \$250,000 but not over \$500,000	\$ 131
more than \$500,000 but not over \$1,000,000	\$ 225
more than \$1,000,000 but not over \$5,000,000	\$ 750
more than \$5,000,000 but not over \$25,000,000	\$2,250
Over \$25,000,000	\$3,375

(C) Provided further, the amount prescribed by this paragraph for a qualified New York manufacturer, as defined in subparagraph (vi) of paragraph (a) of this subdivision, and a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten

million dollar limitation expressed in subparagraph one of such paragraph (c), that is not a New York S corporation, will be determined in accordance with the following tables. However, with respect to qualified New York manufacturers, the amounts in these tables will apply in the case of a combined report only if the combined group satisfies the requirements to be a qualified New York manufacturer as set forth in such subparagraph (vi).

For tax years beginning on or after January 1, 2015 and before January 1, 2016:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 22
more than \$100,000 but not over \$250,000	\$ 66
more than \$250,000 but not over \$500,000	\$ 153
more than \$500,000 but not over \$1,000,000	\$ 439
more than \$1,000,000 but not over \$5,000,000	\$1,316
more than \$5,000,000 but not over \$25,000,000	\$3,070
Over \$25,000,000	\$4,385

For tax years beginning on or after January 1, 2016 and before January 1, 2018:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 21
more than \$100,000 but not over \$250,000	\$ 63
more than \$250,000 but not over \$500,000	\$ 148
more than \$500,000 but not over \$1,000,000	\$ 423
more than \$1,000,000 but not over \$5,000,000	\$1,269
more than \$5,000,000 but not over \$25,000,000	\$2,961
Over \$25,000,000	\$4,230

For tax years beginning on or after January 1, 2018:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 19
more than \$100,000 but not over \$250,000	\$ 56
more than \$250,000 but not over \$500,000	\$ 131
more than \$500,000 but not over \$1,000,000	\$ 375
more than \$1,000,000 but not over \$5,000,000	\$1,125
more than \$5,000,000 but not over \$25,000,000	\$2,625
Over \$25,000,000	\$3,750

(D) Otherwise, for all other taxpayers not covered by clauses (A),

(B), (C) and (D-1) of this subparagraph, the amount prescribed by this paragraph will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 25
more than \$100,000 but not over \$250,000	\$ 75
more than \$250,000 but not over \$500,000	\$ 175
more than \$500,000 but not over \$1,000,000	\$ 500
more than \$1,000,000 but not over \$5,000,000	\$1,500
more than \$5,000,000 but not over \$25,000,000	\$3,500
more than \$25,000,000 but not over \$50,000,000	\$5,000
more than \$50,000,000 but not over \$100,000,000	\$10,000
more than \$100,000,000 but not over \$250,000,000	\$20,000
more than \$250,000,000 but not over \$500,000,000	\$50,000
more than \$500,000,000 but not over \$1,000,000,000	\$100,000
Over \$1,000,000,000	\$200,000

(D-1) In the case of a REIT or a RIC that is not a captive REIT or captive RIC, the amount prescribed by this paragraph will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 25
more than \$100,000 but not over \$250,000	\$ 75
more than \$250,000 but not over \$500,000	\$ 175
more than \$500,000	\$ 500

(E) For purposes of this paragraph, New York receipts are the receipts included in the numerator of the apportionment factor determined under section two hundred ten-A for the taxable year.

(2) If the taxable year is less than twelve months, the amount of New York receipts is determined by dividing the amount of the receipts for the taxable year by the number of months in the taxable year and multiplying the result by twelve, and the amount prescribed by this paragraph shall be reduced by twenty-five percent of the period for which the taxpayer is subject to tax is more than six months but not more than nine months and by fifty percent if the period for which the taxpayer is subject to tax is not more than six months. In the case of a termination year of a New York S corporation, the sum of the tax computed under this paragraph for the S short year and for the C short year shall not be less than the amount computed under this paragraph as

if the corporation were a New York C corporation for the entire taxable year.

(f) For purposes of this section, the term "small business taxpayer" shall mean a taxpayer (i) which has an entire net income of not more than three hundred ninety thousand dollars for the taxable year; (ii) the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed one million dollars; (iii) which is not part of an affiliated group, as defined in section 1504 of the internal revenue code, unless such group, if it had filed a report under this article on a combined basis, would have itself qualified as a "small business taxpayer" pursuant to this subdivision; and (iv) which has an average number of individuals, excluding general executive officers, employed full-time in the state during the taxable year of one hundred or fewer. If the taxable period to which subparagraph (i) of this paragraph applies is less than twelve months, entire net income under such subparagraph shall be placed on an annual basis by multiplying the entire net income by twelve and dividing the result by the number of months in the period. For purposes of subparagraph (ii) of this paragraph, the amount taken into account with respect to any property other than money shall be the amount equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liability to which the property was subject or which was assumed by the corporation. The determination under the preceding sentence shall be made as of the time the property was received by the corporation. For purposes of subparagraph (iv) of this paragraph, "average number of individuals, excluding general executive officers, employed full-time" shall be computed by ascertaining the number of such individuals employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year or other applicable period, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year or other applicable period. An individual employed full-time means an employee in a job consisting of at least thirty-five hours per week, or two or more employees who are in jobs that together constitute the equivalent of a job at least

thirty-five hours per week (full-time equivalent). Full-time equivalent employees in the state include all employees regularly connected with or working out of an office or place of business of the taxpayer within the state.

1-c. The computations specified in paragraph (b) of subdivision one of this section shall not apply to the first two taxable years of a taxpayer which, for one or both such years, is a small business taxpayer as defined in paragraph (f) of subdivision one of this section.

2. The amount of investment capital and business capital shall each be determined by taking the average value of the assets included therein (less liabilities deductible therefrom pursuant to the provisions of subdivisions five and seven of section two hundred eight), and, if the period covered by the report is other than a period of twelve calendar months, by multiplying such value by the number of calendar months or major parts thereof included in such period, and dividing the product thus obtained by twelve. For purposes of this subdivision, real property and marketable securities shall be valued at fair market value and the value of personal property other than marketable securities shall be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles.

3. A corporation that is a partner in a partnership shall compute tax under this article using the aggregate method as defined in the regulations of the commissioner, unless another method for computing such tax is required or allowed by such regulations. Under the aggregate method, a corporation that is a partner in a partnership is viewed as having an undivided interest in the partnership's assets, liabilities, and items of receipts, income, gain, loss and deduction. Under the aggregate method, the corporation that is a partner in a partnership is treated as participating in the partnership's transactions and activities.

§ 210-A. Apportionment. 1. General. Business income and capital shall be apportioned to the state by the apportionment factor determined

pursuant to this section. The apportionment factor is a fraction, determined by including only those receipts, net income, net gains, and other items described in this section that are included in the computation of the taxpayer's business income (determined without regard to the modification provided in subparagraph nineteen of paragraph (a) of subdivision nine of section two hundred eight of this article) for the taxable year. The numerator of the apportionment fraction shall be equal to the sum of all the amounts required to be included in the numerator pursuant to the provisions of this section and the denominator of the apportionment fraction shall be equal to the sum of all the amounts required to be included in the denominator pursuant to the provisions of this section.

2. Sales of tangible personal property, electricity, and real property. (a) Receipts from sales of tangible personal property where shipments are made to points within the state or the destination of the property is a point in the state shall be included in the numerator of the apportionment fraction. Receipts from sales of tangible personal property where shipments are made to points within and without the state or the destination is within and without the state shall be included in the denominator of the apportionment fraction.

(b) Receipts from sales of electricity delivered to points within the state shall be included in the numerator of the apportionment fraction. Receipts from sales of electricity delivered to points within and without the state shall be included in the denominator of the apportionment fraction.

(c) Receipts from sales of tangible personal property and electricity that are traded as commodities, as the term "commodity" is defined in section 475 of the internal revenue code, are included in the apportionment fraction in accordance with clause (I) of subparagraph two of paragraph (a) of subdivision five of this section.

(d) Net gains (not less than zero) from the sales of real property located within the state shall be included in the numerator of the apportionment fraction. Net gains (not less than zero) from the sales of real property located within and without the state shall be included in the denominator of the apportionment fraction.

3. Rentals and royalties. (a) Receipts from rentals of real and tangible personal property located within the state are included in the numerator of the apportionment fraction. Receipts from rentals of real and tangible personal property located within and without the state shall be included in the denominator of the apportionment fraction.

(b) Receipts of royalties from the use of patents, copyrights, trademarks, and similar intangible personal property within the state are included in the numerator of the apportionment fraction. Receipts of royalties from the use of patents, copyrights, trademarks and similar intangibles within and without the state are included in the denominator of the apportionment fraction. A patent, copyright, trademark or similar intangible property is used in the state to the extent that the activities thereunder are carried on in the state.

(c) Receipts from the sales of rights for closed-circuit and cable television transmissions of an event (other than events occurring on a regularly scheduled basis) taking place within the state as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists are included in the numerator of the apportionment fraction to the extent that such receipts are attributable to such transmissions received or exhibited within the state. Receipts from all sales of rights for closed-circuit and cable television transmissions of an event are included in the denominator of the apportionment fraction.

4. Digital products. (a) For purposes of determining the apportionment fraction under this section, the term "digital product" means any property or service, or combination thereof, of whatever nature delivered to the purchaser through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination thereof. Digital product includes, but is not limited to, an audio work, audiovisual work, visual work, book or literary work, graphic work, game, information or entertainment service, storage of digital products and computer software by whatever means delivered. The term "delivered to" includes furnished or provided to or accessed by. A digital product does not include legal, medical, accounting, architectural, research, analytical, engineering or consulting services provided by the taxpayer.

(b) Receipts from the sale of, licence to use, or granting of remote access to digital products within the state, determined according to the hierarchy of methods set forth in subparagraphs one through four of paragraph (c) of this subdivision, shall be included in the numerator of the apportionment fraction. Receipts from the sale of, license to use, or granting of remote access to digital products within and without the state shall be included in the denominator of the apportionment fraction. The taxpayer must exercise due diligence under each method described in paragraph (c) of this subdivision before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry. If the receipt for a digital product is comprised of a combination of property and services, it cannot be divided into separate components and is considered to be one receipt regardless of whether it is separately stated for billing purposes. The entire receipt must be allocated by this hierarchy.

(c) Hierarchy of sourcing methods. (1) The customer's primary use location of the digital product;

(2) The location where the digital product is received by the customer, or is received by a person designated for receipt by the customer;

(3) The apportionment fraction determined pursuant to this subdivision for the preceding taxable year for such digital product; or

(4) The apportionment fraction in the current taxable year for those digital products that can be sourced using the hierarchy of sourcing methods in subparagraphs one and two of this paragraph.

5. Financial transactions. (a) Financial instruments. A financial instrument is a "nonqualified financial instrument" if it is not a qualified financial instrument. A qualified financial instrument means a financial instrument that is of a type described in any of clauses (A), (B), (C), (D), (G), (H) or (I) of subparagraph two of this paragraph and that has been marked to market in the taxable year by the taxpayer under section 475 or section 1256 of the internal revenue code. Further, if the taxpayer has in the taxable year marked to market a financial instrument of the type described in any of the clauses (A), (B), (C),

(D), (G), (H) or (I) of subparagraph two of this paragraph, then any financial instrument within that type described in the above specified clause or clauses that has not been marked to market by the taxpayer under section 475 or section 1256 of the internal revenue code is a qualified financial instrument in the taxable year. Notwithstanding the two preceding sentences, (i) a loan secured by real property shall not be a qualified financial instrument, (ii) if the only loans that are marked to market by the taxpayer under section 475 or section 1256 of the internal revenue code are loans secured by real property, then no loans shall be qualified financial instruments, (iii) stock that is investment capital as defined in paragraph (a) of subdivision five of section two hundred eight of this article shall not be a qualified financial instrument, and (iv) stock that generates other exempt income as defined in subdivision six-a of section two hundred eight of this article and that is not marked to market under section 475 or section 1256 of the internal revenue code shall not constitute a qualified financial instrument with respect to the income from that stock that is described in such subdivision six-a. If a corporation is included in a combined report, the definition of qualified financial instrument shall be determined on a combined basis. In the case of a RIC or a REIT that is not a captive RIC or a captive REIT, a qualified financial instrument means a financial instrument that is of a type described in any of clauses (A), (B), (C), (D), (G), (H) or (I) of subparagraph two of this paragraph, other than (i) a loan secured by real property, (ii) stock that is investment capital as defined in paragraph (a) of subdivision five of section two hundred eight of this article, and (iii) stock that generates other exempt income as defined in subdivision six-a of section two hundred eight of this article with respect to the income from that stock that is described in such subdivision six-a.

(1) Fixed percentage method for qualified financial instruments. In determining the inclusion of receipts and net gains from qualified financial instruments in the apportionment fraction, taxpayers may elect to use the fixed percentage method described in this subparagraph for qualified financial instruments. The election is irrevocable, applies to all qualified financial instruments, and must be made on an annual basis on the taxpayer's original, timely filed return, determined with regard to extensions of time for filing. If the taxpayer elects the fixed

percentage method, then all income, gain or loss, including marked to market net gains as defined in clause (J) of subparagraph two of this paragraph, from qualified financial instruments constitutes business income, gain or loss. If the taxpayer does not elect to use the fixed percentage method, then receipts and net gains are included in the apportionment fraction in accordance with the customer sourcing method described in subparagraph two of this paragraph. Under the fixed percentage method, eight percent of all net income (not less than zero) from qualified financial instruments is included in the numerator of the apportionment fraction. All net income (not less than zero) from qualified financial instruments is included in the denominator of the apportionment fraction.

(2) Customer sourcing method. Receipts and net gains from qualified financial instruments, in cases where the taxpayer did not elect to use the fixed percentage method described in subparagraph one of this paragraph, and from nonqualified financial instruments are included in the apportionment fraction in accordance with this subparagraph. For purposes of this paragraph, an individual is deemed to be located in the state if his or her billing address is in the state. A business entity is deemed to be located in the state if its commercial domicile is located in the state.

(A) Loans. (i) Receipts constituting interest from loans secured by real property located within the state shall be included in the numerator of the apportionment fraction. Receipts constituting interest from loans secured by real property located within and without the state shall be included in the denominator of the apportionment fraction.

(ii) Receipts constituting interest from loans not secured by real property shall be included in the numerator of the apportionment fraction if the borrower is located in the state. Receipts constituting interest from loans not secured by real property, whether the borrower is located within or without the state, shall be included in the denominator of the apportionment fraction.

(iii) Net gains (not less than zero) from sales of loans secured by real property are included in the numerator of the apportionment fraction as provided in this subclause. The amount of net gains from the sale of loans secured by real property included in the numerator of the apportionment fraction is determined by multiplying the net gains by a

fraction the numerator of which is the amount of gross proceeds from sales of loans secured by real property located within the state and the denominator of which is the gross proceeds from sales of loans secured by real property within and without the state. Gross proceeds shall be determined after the deduction of any cost incurred to acquire the loans but shall not be less than zero. Net gains (not less than zero) from sales of loans secured by real property within and without the state are included in the denominator of the apportionment fraction.

(iv) Net gains (not less than zero) from sales of loans not secured by real property are included in the numerator of the apportionment fraction as provided in this subclause. The amount of net gains from the sale of loans not secured by real property included in the numerator of the apportionment fraction is determined by multiplying the net gains by a fraction, the numerator of which is the amount of gross proceeds from sales of loans not secured by real property to purchasers located within the state and the denominator of which is the amount of gross proceeds from sales of loans not secured by real property to purchasers located within and without the state. Gross proceeds shall be determined after the deduction of any cost incurred to acquire the loans but shall not be less than zero. Net gains (not less than zero) from sales of loans not secured by real property are included in the denominator of the apportionment fraction.

(v) For purposes of this subdivision, a loan is secured by real property if fifty percent or more of the value of the collateral used to secure the loan, when valued at fair market value as of the time the loan was entered into, consists of real property.

(B) Federal, state, and municipal debt. Receipts constituting interest and net gains from sales of debt instruments issued by the United States, any state, or political subdivision of a state shall not be included in the numerator of the apportionment fraction. Receipts constituting interest and net gains (not less than zero) from sales of debt instruments issued by the United States and the state of New York or its political subdivisions shall be included in the denominator of the apportionment fraction. Fifty percent of the receipts constituting interest and net gains (not less than zero) from sales of debt instruments issued by other states or their political subdivisions shall be included in the denominator of the apportionment fraction.

(C) Asset backed securities and other government agency debt. Eight percent of the interest income from asset backed securities or other securities issued by government agencies, including but not limited to securities issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Small Business Administration, or asset backed securities issued by other entities shall be included in the numerator of the apportionment fraction. Eight percent of the net gains (not less than zero) from (i) sales of asset backed securities or other securities issued by government agencies, including but not limited to securities issued by GNMA, FNMA, or FHLMC, the Small Business Administration, or (ii) sales of other asset backed securities that are sold through a registered securities broker or dealer or through a licensed exchange, shall be included in the numerator of the apportionment fraction. The amount of net gains (not less than zero) from sales of other asset backed securities not referenced in subclause (i) or (ii) of this clause included in the numerator of the apportionment fraction is determined by multiplying such net gains by a fraction, the numerator of which is the amount of gross proceeds from such sales to purchasers located in the state and the denominator of which is the amount of gross proceeds from such sales to purchasers located within and without the state. Receipts constituting interest from asset backed securities and other securities referenced in this clause and net gains (not less than zero) from sales of asset backed securities and other securities referenced in this clause are included in the denominator of the apportionment fraction. Gross proceeds shall be determined after the deduction of any cost to acquire the securities but shall not be less than zero.

(D) Corporate bonds. Receipts constituting interest from corporate bonds are included in the numerator of the apportionment fraction if the commercial domicile of the issuing corporation is in the state. Eight percent of the net gains (not less than zero) from sales of corporate bonds sold through a registered securities broker or dealer or through a licensed exchange is included in the numerator of the apportionment fraction. The amount of net gains (not less than zero) from other sales of corporate bonds included in the numerator of the apportionment fraction is determined by multiplying such net gains by a fraction, the

numerator of which is the amount of gross proceeds from such sales to purchasers located in the state and the denominator of which is the amount of gross proceeds from sales to purchasers located within and without the state. Receipts constituting interest from corporate bonds, whether the issuing corporation's commercial domicile is within or without the state, and net gains (not less than zero) from sales of corporate bonds to purchasers within and without the state are included in the denominator of the apportionment fraction. Gross proceeds shall be determined after the deduction of any cost to acquire the bonds but shall not be less than zero.

(E) Reverse repurchase agreements and securities borrowing agreements. Eight percent of net interest income (not less than zero) from reverse repurchase agreements and securities borrowing agreements shall be included in the numerator of the apportionment fraction. Net interest income (not less than zero) from reverse repurchase agreements and securities borrowing agreements is included in the denominator of the apportionment fraction. Net interest income from reverse repurchase agreements and securities borrowing agreements is determined for purposes of this subdivision after the deduction of the interest expense from the taxpayer's repurchase agreements and securities lending agreements but cannot be less than zero. For this calculation, the amount of such interest expense is the interest expense associated with the sum of the value of the taxpayer's repurchase agreements where it is the seller/borrower plus the value of the taxpayer's securities lending agreements where it is the securities lender, provided such sum is limited to the sum of the value of the taxpayer's reverse repurchase agreements where it is the purchaser/lender plus the value of the taxpayer's securities lending agreements where it is the securities borrower.

(F) Federal funds. Eight percent of the net interest (not less than zero) from federal funds is included in the numerator of the apportionment fraction. The net interest (not less than zero) from federal funds is included in the denominator of the apportionment fraction. Net interest from federal funds is determined after deduction of interest expense from federal funds.

(G) Dividends and net gains from sales of stock or partnership interests. Dividends from stock, net gains (not less than zero) from

sales of stock and net gains (not less than zero) from the sale of partnership interests are not included in either the numerator or denominator of the apportionment fraction unless the commissioner determines pursuant to subdivision eleven of this section that inclusion of such dividends and net gains (not less than zero) is necessary to properly reflect the business income or capital of the taxpayer.

(H) Other financial instruments. (i) Receipts constituting interest from other financial instruments shall be included in the numerator of the apportionment fraction if the payor is located in the state. Receipts constituting interest from other financial instruments, whether the payor is within or without the state, are included in the denominator of the apportionment fraction.

(ii) Net gains (not less than zero) from sales of other financial instruments and other income (not less than zero) from other financial instruments where the purchaser or payor is located in the state are included in the numerator of the apportionment fraction, provided that, if the purchaser or payor is a registered securities broker or dealer or the transaction is made through a licensed exchange, then eight percent of the net gains (not less than zero) or other income (not less than zero) is included in the numerator of the apportionment fraction. Net gains (not less than zero) from sales of other financial instruments and other income (not less than zero) from other financial instruments are included in the denominator of the apportionment fraction.

(I) Physical commodities. Net income (not less than zero) from sales of physical commodities are included in the numerator of the apportionment fraction as provided in this clause. The amount of net income from sales of physical commodities included in the numerator of the apportionment fraction is determined by multiplying the net income from sales of physical commodities by a fraction, the numerator of which is the amount of receipts from sales of physical commodities actually delivered to points within the state or, if there is no actual delivery of the physical commodity, sold to purchasers located in the state, and the denominator of which is the amount of receipts from sales of physical commodities actually delivered to points within and without the state or, if there is no actual delivery of the physical commodity, sold to purchasers located within and without the state. Net income (not less than zero) from sales of physical commodities is included in the

denominator of the apportionment fraction. Net income (not less than zero) from sales of physical commodities is determined after the deduction of the cost to acquire or produce the physical commodities.

(J) Marked to market net gains. (i) For purposes of this subdivision, "marked to market" means that a financial instrument is, under section 475 or section 1256 of the internal revenue code, treated by the taxpayer as sold for its fair market value on the last business day of the taxpayer's taxable year. "Marked to market gain or loss" means the gain or loss recognized by the taxpayer under section 475 or section 1256 of the internal revenue code because the financial instrument is treated as sold for its fair market value on the last business day of the taxpayer's taxable year.

(ii) The amount of marked to market net gains (not less than zero) from each type of financial instrument that is marked to market included in the numerator of the apportionment fraction is determined by multiplying the marked to market net gains (but not less than zero) from such type of the financial instrument by a fraction, the numerator of which is the numerator of the apportionment fraction for the net gains from that type of financial instrument determined under the applicable clause of this subparagraph and the denominator of which is the denominator of the apportionment fraction for the net gains for that type of financial instrument determined under the applicable clause of this subparagraph. Marked to market net gains (not less than zero) from financial instruments for which the numerator of the apportionment fraction is determined under the immediately preceding sentence are included in the denominator of the apportionment fraction.

(iii) If the type of financial instrument that is marked to market is not otherwise sourced by the taxpayer under this subparagraph, or if the taxpayer has a net loss from the sales of that type of financial instrument under the applicable clause of this subparagraph, the amount of marked to market net gains (not less than zero) from that type of financial instrument included in the numerator of the apportionment fraction is determined by multiplying the marked to market net gains (but not less than zero) from that type of financial instrument by a fraction, the numerator of which is the sum of the amount of receipts included in the numerator of the apportionment fraction under clauses (A), (B), (C), (D), (E), (F), (G), (H) and (I) of this subparagraph and

subclause (ii) of this clause, and the denominator of which is the sum of the amount of receipts included in the denominator of the apportionment fraction under clauses (A), (B), (C), (D), (E), (F), (G), (H) and (I) and subclause (ii) of this clause. Marked to market net gains (not less than zero) for which the amount to be included in the numerator of the apportionment fraction is determined under the immediately preceding sentence are included in the denominator of the apportionment fraction.

(b) Other receipts from broker or dealer activities. Receipts of a registered securities broker or dealer from securities or commodities broker or dealer activities described in this paragraph shall be deemed to be generated within the state as described in subparagraphs one through eight of this paragraph. Receipts from such activities generated within the state shall be included in the numerator of the apportionment fraction. Receipts from such activities generated within and without the state shall be included in the denominator of the apportionment fraction. For the purposes of this paragraph, the term "securities" shall have the same meaning as in section 475(c)(2) of the internal revenue code and the term "commodities" shall have the same meaning as in section 475(e)(2) of the internal revenue code.

(1) Receipts constituting brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of the customer who is responsible for paying such commissions is within the state.

(2) Receipts constituting margin interest earned on behalf of brokerage accounts shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of the customer who is responsible for paying such margin interest is within the state.

(3)(A) Receipts constituting fees earned by the taxpayer for advisory services to a customer in connection with the underwriting of securities for such customer (such customer being the entity that is contemplating issuing or is issuing securities) or fees earned by the taxpayer for managing an underwriting shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of such customer who is responsible for paying such fees is within the state.

(B) Receipts constituting the primary spread of selling concession

from underwritten securities shall be deemed to be generated within the state if the customer is located in the state.

(C) The term "primary spread" means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or any manager's fees, if such fees are not paid by the customer to the taxpayer separately. The term "public offering price" means the price agreed upon by the taxpayer and the issuer at which the securities are to be offered to the public. The term "selling concession" means the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

(4) Receipts constituting account maintenance fees shall be deemed to be generated within the state if the mailing address in the record of the taxpayer of the customer who is responsible for paying such account maintenance fees is within the state.

(5) Receipts constituting fees for management or advisory services, including fees for advisory services in relation to merger or acquisition activities, but excluding fees paid for services described in paragraph (d) of this subdivision, shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of the customer who is responsible for paying such fees is within the state.

(6) Receipts constituting interest earned by the taxpayer on loans and advances made by the taxpayer to a corporation affiliated with the taxpayer but with which the taxpayer is not permitted or required to file a combined report pursuant to section two hundred ten-C of this article shall be deemed to arise from services performed at the principal place of business of such affiliated corporation.

(7) If the taxpayer receives any of the receipts enumerated in subparagraphs one through four of this paragraph as a result of a securities correspondent relationship such taxpayer has with another broker or dealer with the taxpayer acting in this relationship as the clearing firm, such receipts shall be deemed to be generated within the state to extent set forth in each of such subparagraphs. The amount of such receipts shall exclude the amount the taxpayer is required to pay

to the correspondent firm for such correspondent relationship. If the taxpayer receives any of the receipts enumerated in subparagraphs one through four of this paragraph as a result of a securities correspondent relationship such taxpayer has with another broker or dealer with the taxpayer acting in this relationship as the introducing firm, such receipts shall be deemed to be generated within the state to the extent set forth in each of such subparagraphs.

(8) If, for purposes of subparagraphs one, two, clause (A) of subparagraph three, four, or five of this paragraph the taxpayer is unable from its records to determine the mailing address of the customer, eight percent of the receipts is included in the numerator of the apportionment fraction.

(c) Receipts from credit card and similar activities. Receipts relating to the bank, credit, travel and entertainment card activities described in this paragraph shall be deemed to be generated within the state as described in subparagraphs one through four of this paragraph. Receipts from such activities generated within the state shall be included in the numerator of the apportionment fraction. Receipts from such activities generated within and without the state shall be included in the denominator of the apportionment fraction.

(1) Receipts constituting interest, and fees and penalties in the nature of interest, from bank, credit, travel and entertainment card receivables shall be deemed to be generated within the state if the mailing address of the card holder in the records of the taxpayer is in the state;

(2) Receipts from service charges and fees from such cards shall be deemed to be generated within the state if the mailing address of the card holder in the records of the taxpayer is in the state; and

(3) Receipts from merchant discounts shall be deemed to be generated within the state if the merchant is located within the state. In the case of a merchant with locations both within and without New York state, only receipts from merchant discounts attributable to sales made from locations within New York state are allocated to New York state. It shall be presumed that the location of the merchant is the address of the merchant shown on the invoice submitted by the merchant to the taxpayer.

(4) Receipts from credit card authorization processing, and clearing

and settlement processing received by credit card processors shall be deemed to be generated within the state if the location where the credit card processor's customer accesses the credit card processor's network is located within the state. The amount of all other receipts received by credit card processors not specifically addressed in subdivisions one through nine of this section deemed to be generated within the state shall be determined by multiplying the total amount of such other receipts by the average of (i) eight percent and (ii) the percent of its New York access points. The percent of New York access points is the number of locations in New York from which the credit card processor's customers access the credit card processor's network divided by the total number of locations in the United States where the credit card processor's customers access the credit card processor's network.

(d) Receipts from certain services to investment companies. Receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company are included in the denominator of the apportionment fraction. The portion of such receipts included in the numerator of the apportionment fraction (such portion referred to herein as the New York portion) shall be determined as provided in this paragraph.

(1) The New York portion shall be the product of the total of such receipts from the sale of such services and a fraction. The numerator of that fraction is the sum of the monthly percentages (as defined hereinafter) determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer (but excluding any month during which the investment company had no outstanding shares). The monthly percentage for each such month is determined by dividing the number of shares in the investment company that are owned on the last day of the month by shareholders that are located in the state by the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(2)(A) For purposes of this paragraph, an individual, estate or trust is deemed to be located in the state if his, her or its mailing address on the records of the investment company is in the state. A business entity is deemed to be located in the state if its commercial domicile is located in the state.

(B) For purposes of this paragraph, the term "investment company" means a regulated investment company, as defined in section 851 of the internal revenue code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue of section 7704(c)(3) of such code) and that meets the requirements of section 851(b) of such code. The preceding sentence shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(C) For purposes of this paragraph the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company, in their capacity as such.

(D) For purposes of this paragraph, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to section 15(a) of the federal investment company act of nineteen hundred forty, as amended.

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

(F) For purposes of this paragraph, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year

in which such service or services are sold also sells management or distribution services, as defined hereinabove, to such investment company.

(e) For purposes of this subdivision, a taxpayer shall use the following hierarchy to determine the commercial domicile of a business entity, based on the information known to the taxpayer or information that would be known upon reasonable inquiry: (i) the seat of management and control of the business entity; and (ii) the billing address of the business entity in the taxpayer's records. The taxpayer must exercise due diligence before rejecting the first method in this hierarchy and proceeding to the next method.

(f) For purposes of this subdivision, the term "registered securities broker or dealer" means a broker or dealer registered as such by the securities and exchange commission or a broker or dealer registered as such by the commodities futures trading commission, and shall include an OTC derivatives dealer as defined under regulations of the securities and exchange commission at title 17, part 240, section 3b-12 of the code of federal regulations (17 CFR 240.3b-12).

5-a. Global intangible low-taxed income. (a) Notwithstanding any other provision of this section, global intangible low-taxed income shall be included in the apportionment fraction as provided in this subdivision.

(b) For New York C corporations, global intangible low-taxed income shall not be included in the numerator of the apportionment fraction. Five percent of global intangible low-taxed income shall be included in the denominator of the apportionment fraction.

(c) For New York S corporations, global intangible low-taxed income shall not be included in the numerator of the apportionment fraction. Global intangible low-taxed income shall be included in the denominator of the apportionment fraction.

(d) For purposes of this subdivision, the term "global intangible low-taxed income" means the amount required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of the internal revenue code.

6. Receipts from railroad and trucking business. Receipts from the conduct of a railroad business (including surface railroad, whether or

not operated by steam, subway railroad, elevated railroad, palace car or sleeping car business) or a trucking business are included in the numerator of the apportionment fraction as follows. The amount of receipts from the conduct of a railroad business or a trucking business included in the numerator of the apportionment fraction is determined by multiplying the amount of receipts from such business by a fraction, the numerator of which is the miles in such business within the state during the period covered by the taxpayer's report and the denominator of which is the miles in such business within and without the state during such period. Receipts from the conduct of the railroad business or a trucking business are included in the denominator of the apportionment fraction.

6-a. Receipts from the operation of vessels. Receipts from the operation of vessels are included in the numerator of the apportionment fraction as follows. The amount of receipts from the operation of vessels included in the numerator of the apportionment fraction is determined by multiplying the amount of such receipts by a fraction, the numerator of which is the aggregate number of working days of the vessels owned or leased by the taxpayer in territorial waters of the state during the period covered by the taxpayer's report and the denominator of which is the aggregate number of working days of all vessels owned or leased by the taxpayer during such period. Receipts from the operation of vessels are included in the denominator of the apportionment fraction.

7. Receipts from aviation services. (a) Air freight forwarding. Receipts of a taxpayer from the activity of air freight forwarding acting as principal and like indirect air carrier receipts arising from such activity shall be included in the numerator of the apportionment fraction as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the state and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in this state. Such receipts, whether the pickup or delivery associated with the receipts is within or without the state, shall be included in the denominator of the apportionment fraction.

(b) Other aviation services. (1)(A) The portion of receipts of a

taxpayer from aviation services (other than services described in paragraph (a) of this subdivision, but including the receipts of a qualified air freight forwarder) to be included in the numerator of the apportionment fraction shall be determined by multiplying its receipts from such aviation services by a percentage which is equal to the arithmetic average of the following three percentages:

(i) the percentage determined by dividing sixty percent of the aircraft arrivals and departures within this state by the taxpayer during the period covered by its report by the total aircraft arrivals and departures within and without this state during such period; provided, however, arrivals and departures solely for maintenance or repair, refueling (where no debarkation or embarkation of traffic occurs), arrivals and departures of ferry and personnel training flights or arrivals and departures in the event of emergency situations shall not be included in computing such arrival and departure percentage; provided, further, the commissioner may also exempt from such percentage aircraft arrivals and departures of all non-revenue flights including flights involving the transportation of officers or employees receiving air transportation to perform maintenance or repair services or where such officers or employees are transported in conjunction with an emergency situation or the investigation of an air disaster (other than on a scheduled flight); provided, however, that arrivals and departures of flights transporting officers and employees receiving air transportation for purposes other than specified above (without regard to remuneration) shall be included in computing such arrival and departure percentage;

(ii) the percentage determined by dividing sixty percent of the revenue tons handled by the taxpayer at airports within this state during such period by the total revenue tons handled by it at airports within and without this state during such period; and

(iii) the percentage determined by dividing sixty percent of the taxpayer's originating revenue within this state for such period by its total originating revenue within and without this state for such period.

(B) As used herein the term "aircraft arrivals and departures" means the number of landings and takeoffs of the aircraft of the taxpayer and the number of air pickups and deliveries by the aircraft of such taxpayer; the term "originating revenue" means revenue to the taxpayer

from the transportation or revenue passengers and revenue property first received by the taxpayer either as originating or connecting traffic at airports; and the term "revenue tons handled" by the taxpayer at airports means the weight in tons of revenue passengers (at two hundred pounds per passenger) and revenue cargo first received either as originating or connecting traffic or finally discharged by the taxpayer at airports;

(2) All such receipts of a taxpayer from aviation services described in this paragraph are included in the denominator of the apportionment fraction.

(3) A corporation is a qualified air freight forwarder with respect to another corporation:

(A) if it owns or controls either directly or indirectly all of the capital stock of such other corporation, or if all of its capital stock is owned or controlled either directly or indirectly by such other corporation, or if all of the capital stock of both corporations is owned or controlled either directly or indirectly by the same interests,

(B) if it is principally engaged in the business of air freight forwarding, and

(C) if its air freight forwarding business is carried on principally with the airline or airlines operated by such other corporation.

8. Receipts from sales of advertising. (a) The amount of receipts from sales of advertising in newspapers or periodicals included in the numerator of the apportionment fraction is determined by multiplying the total of such receipts by a fraction, the numerator of which is the number of newspapers and periodicals delivered to points within the state and the denominator of which is the number of newspapers and periodicals delivered to points within and without the state. The total of such receipts from sales of advertising in newspapers or periodicals is included in the denominator of the apportionment fraction.

(b) The amount of receipts from sales of advertising on television or radio included in the numerator of the apportionment fraction is determined by multiplying the total of such receipts by a fraction, the numerator of which is the number of viewers or listeners within the state and the denominator of which is the number of viewers or listeners within and without the state. The total of such receipts from sales of

advertising on television and radio is included in the denominator of the apportionment fraction.

(c) The amount of receipts from sales of advertising not described in paragraph (a) or (b) of this subdivision that is furnished, provided or delivered to, or accessed by the viewer or listener through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media or any combination thereof, included in the numerator of the apportionment fraction is determined by multiplying the total of such receipts by a fraction, the numerator of which is the number of viewers or listeners within the state and the denominator of which is the number of viewers or listeners within and without the state. The total of such receipts from sales of advertising described in this paragraph is included in the denominator of the apportionment fraction.

9. Receipts from transportation or transmission of gas through pipes. Receipts from the transportation or transmission of gas through pipes are included in the numerator of the apportionment fraction as follows. The amount of receipts from the transportation or transmission of gas through pipes included in the numerator of the apportionment fraction is determined by multiplying the total amount of such receipts by a fraction, the numerator of which is the taxpayer's transportation units within the state and the denominator of which is the taxpayer's transportation units within and without the state. A transportation unit is the transportation of one cubic foot of gas over a distance of one mile. The total amount of receipts from the transportation or transmission of gas through pipes is included in the denominator of the apportionment fraction.

10. (a) Receipts from other services and other business receipts. Receipts from services not addressed in subdivisions one through nine of this section and other business receipts not addressed in such subdivisions shall be included in the numerator of the apportionment fraction if the location of the customer is within the state. Such receipts from customers within and without the state are included in the denominator of the apportionment fraction. Whether the receipts are included in the numerator of the apportionment fraction is determined

according to the hierarchy of method set forth in paragraph (b) of this subdivision. The taxpayer must exercise due diligence under each method described in such paragraph (b) before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry.

(b) Hierarchy of methods. (1) The benefit is received in this state;

(2) Delivery destination;

(3) The apportionment fraction for such receipts within the state determined pursuant to this subdivision for the preceding taxable year; or

(4) The apportionment fraction in the current taxable year determined pursuant to this subdivision for those receipts that can be sourced using the hierarchy of sourcing methods in subparagraphs one and two of this paragraph.

11. If it shall appear that the apportionment fraction determined pursuant to this section does not result in a proper reflection of the taxpayer's business income or capital within the state, the commissioner is authorized in his or her discretion to adjust it, or the taxpayer may request that the commissioner adjust it, by (a) excluding one or more items in such determination, (b) including one or more other items in such determination, or (c) any other similar or different method calculated to effect a fair and proper apportionment of the business income and capital reasonably attributed to the state. The party seeking the adjustment shall bear the burden of proof to demonstrate that the apportionment fraction determined pursuant to this section does not result in a proper reflection of the taxpayer's business income or capital within the state and that the proposed adjustment is appropriate.

§ 210-B. Credits. 1. Investment tax credit (ITC). (a) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be the percent provided for hereinbelow of the investment credit base. The investment credit base is the cost or other basis for federal income

tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph (b) of this subdivision, less the amount of the nonqualified nonrecourse financing with respect to such property to the extent such financing would be excludible from the credit base pursuant to section 46(c)(8) of the internal revenue code (treating such property as section thirty-eight property irrespective of whether or not it in fact constitutes section thirty-eight property). If, at the close of a taxable year following the taxable year in which such property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be treated as if it were the cost or other basis of property described in paragraph (b) of this subdivision acquired, constructed, reconstructed or erected during the year of the decrease in the amount of nonqualified nonrecourse financing. In the case of a combined report the term investment credit base shall mean the sum of the investment credit base of each corporation included on such report. The percentage to be used to compute the credit allowed pursuant to this subdivision shall be five percent with respect to the first three hundred fifty million dollars of the investment credit base, and four percent with respect to the investment credit base in excess of three hundred fifty million dollars, except that in the case of research and development property at the option of the taxpayer the applicable percentage shall be nine.

(a-1) For a taxpayer that is an eligible farmer, as defined in subdivision eleven of this section, the percentage to be used to compute the credit allowed under this subdivision shall be twenty percent for property described in subparagraph (i) of paragraph (b) of this subdivision that is principally used by the taxpayer in the production of goods by farming, agriculture, horticulture, floriculture or viticulture.

(b) (i) A credit shall be allowed under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal

revenue code, have a situs in this state and are (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (B) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (C) research and development property, or (D) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, (E) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, (F) principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange within the meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a board of trade as defined in subparagraph one of paragraph (a) of section fourteen hundred ten of the not-for-profit corporation law or as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides automation or technical services thereto, or (G) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services,

and heating, ventilation and air conditioning. For purposes of clauses (D), (E) and (F) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, registered investment advisor, national securities exchange or board of trade, is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer, registered investment advisor, national securities exchange or board of trade in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (D) and (E) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment advisor under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (D), (E) and (F) of this subparagraph unless the property is first placed in service before October first, two thousand fifteen and (i) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state or (ii) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (iii) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of clause (iii) of this subparagraph the employment test will be based on the number of

employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of clause (A) of this subparagraph, tangible personal property and other tangible property shall not include property principally used by the taxpayer in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains.

(ii) For purposes of this paragraph, the following definitions shall apply--

(A) Manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

(B) Research and development property shall mean property which is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(C) Industrial waste treatment facilities shall mean property constituting facilities for the treatment, neutralization or stabilization of industrial waste and other wastes (as the terms "industrial waste" and "other wastes" are defined in section 17-0105 of

the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(D) Air pollution control facilities shall mean property constituting facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the department of environmental conservation, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission. Such term shall further include flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities that conform with this subdivision and which comply with the provisions of the state acid deposition control act set forth in title nine of article nineteen of the environmental conservation law.

(E) The terms "qualified film production facility" and "qualified film production company" shall have the same meaning as in section twenty-four of this chapter.

(iii) However, such credit shall be allowed with respect to industrial waste treatment facilities and air pollution control facilities only on condition that such facilities have been certified by the state commissioner of environmental conservation or his designated representative, pursuant to subdivision one of section 17-0707 or subdivision one of section 19-0309 of the environmental conservation law, as complying with applicable provisions of the environmental conservation law, the public health law, the state sanitary code and codes, rules, regulations, permits or orders issued pursuant thereto.

(c) A taxpayer shall not be allowed a credit under this subdivision

with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation except where a taxpayer leases property to an affiliated regulated broker, dealer, registered investment adviser, national securities exchange or board of trade (or other entity described in clause (F) of subparagraph (i) of paragraph (b) of this subdivision) that uses such property in accordance with clause (D), (E) or (F) of subparagraph (i) of paragraph (b) of this subdivision. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be allowed a credit under this subdivision with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded. For purposes of this paragraph, the use of a qualified film production facility by a qualified film production company shall not be considered a lease of such facility to such company.

(d) Except as otherwise provided in this paragraph, the credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit allowed for a taxable year commencing prior to January first, nineteen hundred eighty-seven and not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years but in no event shall such credit be carried over to taxable years commencing on or after January first, two thousand two, and any amount of credit allowed for a taxable year commencing on or after January first, nineteen hundred eighty-seven and not deductible in such year may be carried over to the fifteen taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years.

In lieu of such carryover, (i) any such taxpayer which qualifies as a new business under paragraph (f) of this subdivision may elect to treat the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter, and (ii) any such taxpayer that is an eligible farmer, as defined in subdivision eleven of this section, may for taxable years beginning before January first, two thousand thirty-three, elect to treat the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(e) (1) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subparagraph, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(2) Except with respect to that property to which subparagraph four of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the internal revenue code, which is disposed of or ceases to be in qualified use

prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(3) Except with respect to that property to which subparagraph four of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the internal revenue code, other than three-year property as defined in subsection (e) of such section one hundred sixty-eight which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(4) With respect to any property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the

credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code.

(5) For purposes of this paragraph, property (i) which is described in subparagraph two, three or four of this paragraph, and (ii) which is subject to subparagraph eleven of paragraph (a) of subdivision nine and subparagraph ten of paragraph (b) of subdivision nine of section two hundred eight of this chapter, shall be treated as property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to section one hundred sixty-eight of such code.

(6) For purposes of this paragraph, where a credit is allowed with respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, such revocation shall constitute a disposal or cessation of qualified use, unless such facility is described in clause (A) or (C) of subparagraph (ii) of paragraph (b) of this subdivision. Also for purposes of this subparagraph, the use of an air pollution control facility or an industrial waste treatment facility for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable shall constitute a cessation of qualified use, unless such facility is described in clause (A) or (C) of subparagraph (ii) of paragraph (b) of this subdivision.

(7) For taxable years commencing on or after January first, nineteen hundred eighty-seven, the amount required to be added back pursuant to this paragraph shall be augmented by an amount equal to the product of such amount and the underpayment rate of interest (without regard to compounding), set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six, in effect on the

last day of the taxable year.

(8) If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c) (8) of the internal revenue code) with respect to any property with respect to which the credit under this subdivision was limited based on attributable nonqualified nonrecourse financing, then an amount equal to the decrease in such credit which would have resulted from reducing, by the amount of such net increase, the cost or other basis taken into account with respect to such property must be added back in such taxable year. The amount of nonqualified nonrecourse financing shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than one year after the date such indebtedness was incurred.

(f) For purposes of paragraph (d) of this subdivision, a new business shall include any corporation, except a corporation which:

(1) over fifty percent of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned or controlled, either directly or indirectly, by a taxpayer subject to tax under this article; section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; or article thirty-three of this chapter; or

(2) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine; article thirty-two of this chapter as such article was in effect on December thirty-first, two thousand fourteen; article thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph (d) of this subdivision with respect to refunding of credit to new business would be evaded; or

(3) has been subject to tax under this article or former article

thirty-two of this chapter for more than five taxable years (excluding short taxable years).

2. Employment Incentive Credit (EIC). (a)(i) Application of credit. Where a taxpayer is allowed a credit under subdivision one of this section, other than at the optional rate applicable to research and development property, the taxpayer shall be allowed a credit for each of the two years next succeeding the taxable year for which the credit under such subdivision one is allowed with respect to such property, whether or not deductible in such taxable year or in subsequent taxable years pursuant to paragraph (d) of such subdivision one. Provided, however, that the credit allowable under this subdivision for any taxable year shall be allowed only if the average number of employees during such taxable year is at least one hundred one percent of the average number of employees during the employment base year. The employment base year shall be the taxable year immediately preceding the taxable year for which the credit under such subdivision one is allowed except that if the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which the credit under such subdivision one of this section is allowed, the employment base year shall be the taxable year in which the credit under such subdivision one is allowed.

(ii) Amount of credit. The amount of the credit allowed under this subdivision shall be as set forth in the following table:

Average number of employees during the taxable year expressed as a percentage of average employees in employment base years	Credit allowed under this subdivision expressed as a percentage of the applicable investment credit basis
Less than 102%	1.5%
At least 102% and less than 103%	2%
At least 103%	2.5%

(b) Average number of employees. The average number of employees in a taxable year shall be computed by ascertaining the number of employees within the state, except general executive officers, employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in the taxable year, by adding together the number of employees ascertained

on each of such dates and dividing the sum so obtained by the number of such above mentioned dates occurring within the taxable year. However, with respect to the employment base year, there shall be excluded therefrom any employee with respect to whom a credit provided for under subdivision six of this section is claimed, for the taxable year, based on employment within a zone equivalent area designated as such pursuant to article eighteen-B of the general municipal law.

(c) Carryover. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the fifteen taxable years immediately following such taxable year and may be deducted from the taxpayer's tax for such year or years.

3. Empire zone investment tax credit (EZ-ITC). (a) A taxpayer shall be allowed a credit, to be computed as herein provided, against the tax imposed by this article if the taxpayer has been certified pursuant to article eighteen-B of the general municipal law. The amount of the credit shall be ten percent of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph (b) of this subdivision, which is located within an empire zone designated as such pursuant to article eighteen-B of such law, but only if the acquisition, construction, reconstruction or erection of such property occurred or was commenced on or after the date of such designation and prior to the expiration thereof. Provided, however, that in the case of an acquisition, construction, reconstruction or erection which was commenced during such period and continued or completed subsequently, such credit shall be ten percent of the portion of the cost or other basis for federal income tax purposes attributable to such period, which portion shall be ascertained by multiplying such cost or basis by a fraction the numerator of which shall be the expenditures paid or incurred during such period for such

purposes and the denominator of which shall be the total of all expenditures paid or incurred for such acquisition, construction, reconstruction or erection.

(b) Qualified property. A credit shall be allowed under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which

(i) are depreciable pursuant to section one hundred sixty-seven of the internal revenue code,

(ii) have a useful life of four years or more,

(iii) are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code,

(iv) have a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, and

(v) are (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing,

(B) industrial waste treatment facilities or air pollution control facilities used in the taxpayer's trade or business,

(C) research and development property,

(D) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code,

(E) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal

Revenue Code,

(E-1) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services or the service of managing investment portfolios to achieve specific investment objectives for accounts over one million dollars of accredited investors (as that term is defined in rule 501 of regulation D of the Securities Act of 1933), if the taxpayer satisfies the following criteria:

(I) the taxpayer is a regulated broker or dealer or an affiliate of a regulated broker or dealer,

(II) the taxpayer is registered as an investment adviser under section two hundred three of the Investment Advisers Act of 1940, as amended, and

(III) at least one client of the taxpayer is a regulated investment company as defined in section eight hundred fifty-one of the internal revenue code that has assets of one hundred million dollars, or

(F) principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange within the meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a board of trade as defined in subdivision one of paragraph (a) of section fourteen hundred ten of the not-for-profit corporation law or as an entity that is wholly owned by one or more such national securities exchanges or boards or trade and that provides automation or technical services thereto.

(vi) For purposes of clauses (D), (E), (E-1) and (F) of subparagraph (v) of this paragraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, registered investment adviser, national securities exchange or board of trade is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer, registered investment adviser or national securities exchange or board of trade in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (D), (E) and (E-1) of subparagraph (v) of this paragraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under any of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (D), (E), (E-1) and (F) of subparagraph (v)

of this paragraph unless

(I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or

(II) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or

(III) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year.

(vii) For the purposes of clause (III) of subparagraph (vi) of this paragraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property.

(viii) For the purpose of this subdivision, the term "goods" shall not include electricity.

(ix) For purposes of this subdivision, "manufacturing" shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which

already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced. For purposes of this subdivision, the terms "research and development property", "industrial waste treatment facilities", and "air pollution control facilities" shall have the meanings ascribed thereto by clauses (B), (C) and (D), respectively, of subparagraph (iv) of paragraph (b) of subdivision one of this section, and the provisions of subparagraph (v) of such paragraph (b) shall apply.

(c) Nonqualified property. A taxpayer shall not be allowed a credit under this subdivision with respect to any tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation except where a taxpayer leases property to an affiliated regulated broker, dealer, registered investment adviser, national securities exchange or board of trade or other entity described in clause (F) of subparagraph (v) of paragraph (b) of this subdivision that uses such property in accordance with clause (D), (E), (E-1) or (F) of subparagraph (v) of paragraph (b) of this subdivision. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be allowed a credit under this subdivision with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded.

(d) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that

if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph (f) of subdivision one of this section may elect, on its report for its taxable year with respect to which such credit is allowed, to treat fifty percent of the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. In addition, any taxpayer which is approved as the owner of a qualified investment project or a significant capital investment project pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law, on its report for its taxable year with respect to which such credit is allowed, in lieu of such carryover, may elect to treat fifty percent of the amount of such carryover which is attributable to the credit allowed under this subdivision for property which is part of such project as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, such owner shall be allowed such refund for a maximum of ten taxable years with respect to such qualified investment project and each significant capital investment project, starting with the first taxable year in which property comprising such project is placed in service. Provided, further, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(d-1) Any carryover of a credit from prior taxable years will not be allowed if an empire zone retention certificate is not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis of the credit.

(e) At the option of the taxpayer, the taxpayer may choose to claim the credit described in paragraph (a) of this subdivision for property which also qualifies for the credit provided under subdivision one of this section. A taxpayer shall not be allowed a credit under this

subdivision with respect to any property described in paragraph (a) of this subdivision if a credit is taken pursuant to subdivision one of this section.

(f) Recapture. (i) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subparagraph, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(ii) Except with respect to that property to which subparagraph (iv) of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the internal revenue code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(iii) Except with respect to that property to which subparagraph (iv) of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the internal revenue code other than three-year property as defined in subsection (e) of such section one hundred sixty-eight which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(iv) With respect to any property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code.

(v) For purposes of this paragraph, disposal or cessation of qualified

use shall not be deemed to have occurred solely by reason of the termination or expiration of an empire zone's designation as such.

(vi)(A) For purposes of this paragraph, the decertification of a business enterprise with respect to an empire zone shall constitute a disposal or cessation of qualified use of the property on which the credit was taken which is located in the zone to which the decertification applies, on the effective date of such decertification.

(B) Where a business enterprise has been decertified based on a finding pursuant to clause one, two, or five of subdivision (a) of section nine hundred fifty-nine of the general municipal law, the amount required to be added back by reason of this paragraph shall be (I) the amount of credit, with respect to the property which is disposed of or ceases to be in qualified use, which was deducted from the taxpayer's tax otherwise due under this article for all prior taxable years, reduced (but not below zero) by (II) the credit allowed for actual use. For purposes of this subparagraph, the attribution to specific property of credit amounts deducted from tax shall be established in accordance with the date of placement in service of such property in the empire zone.

(C) In no event shall the amount of the credit allowed pursuant to this subdivision be rendered, solely by reason of clause (A) of this subparagraph, less than the amount of the credit to which the taxpayer would otherwise be entitled under subdivision one of this section.

(D) Notwithstanding any other provision of this subdivision, in the case of a business enterprise which has been decertified, any amount of credit allowed with respect to the property of such business enterprise located in the zone to which the decertification applies which is carried over pursuant to paragraph (d) of this subdivision shall not be carried over beyond the seventh taxable year next following the taxable year with respect to which the credit provided for in this subdivision was allowed.

(vii) For purposes of this paragraph, where a credit is allowed with respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, such revocation shall constitute a disposal or cessation of qualified use,

except with respect to property contained in or comprising such facility which is described in clause (A), (B), or (C) of subparagraph (v) of paragraph (b) of this subdivision other than as part of or comprising an air pollution control facility. Also for purposes of this paragraph, the use of an air pollution control facility or an industrial waste treatment facility for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable shall constitute a cessation of qualified use, except with respect to property contained in or comprising such facility which is described in clause (A) or (C) of subparagraph (v) of paragraph (b) of this subdivision.

(viii) Except as provided in this subparagraph, this paragraph shall not apply to a credit allowed by this subdivision to a taxpayer that is a partner in a partnership in the case of manufacturing property; provided, at the time such property was placed in service by such partnership in an empire zone the basis for federal income tax purposes for such property (or a project that includes such property) equaled or exceeded three hundred million dollars and such partner owned its partnership interest for at least three years from the date such property was placed in service. If such property ceases to be in qualified use after it is placed in service, this paragraph shall apply to such partner in the year such property ceases to be in qualifying use.

(ix) If a taxpayer, which is approved by the commissioner of economic development as the owner of a qualified investment project or a significant capital investment project pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law, fails to (A) create at least the minimum number of jobs at such project as required by the provisions of subdivision (s) or (t) of section nine hundred fifty-seven and subdivision (w) of section nine hundred fifty-nine of the general municipal law or (B) place in service property comprising such qualified investment project or significant capital investment project with a basis for federal income tax purposes equaling or exceeding the applicable minimum required basis as provided in such subdivision (s) or (t), whichever is relevant, by the last day of the fifth taxable year following the taxable year in which a credit is first allowed under this subdivision for the property which comprises such qualified investment project or such significant capital investment

project, the total amount of the credit allowed under this subdivision for all taxable years with respect to the property which comprises such project which has been refunded to such taxpayer shall be added back in such taxable year.

(g) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law, a taxpayer that is certified as a qualified investment project pursuant to such article eight-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed certified under such article eighteen-B for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years. In addition, the areas designated as empire zones in which the taxpayer is certified as a qualified investment project on the day immediately preceding the day the empire zones program expired shall continue to be deemed empire zones for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years.

(h) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law and except as provided in paragraph (g) of this subdivision, a taxpayer that is certified as an empire zone business pursuant to such article eighteen-B on the day immediately preceding the day the empire zone program expired shall continue to be deemed certified under such article eighteen-B for purposes of this subdivision until April first, two thousand fourteen. In addition, the areas designated as empire zones in which the taxpayer is certified as an empire zone business on the day immediately preceding the day the empire zones program expired shall continue to be deemed empire zones for purposes of this subdivisions until April first, two thousand fourteen.

4. Empire zone employment incentive credit (EZ-EIC). (a) Application of credit. Where a taxpayer is allowed a credit under subdivision three of this section, the taxpayer shall be allowed a credit for each of the three years next succeeding the taxable year for which the credit under such subdivision three is allowed, with respect to such property, whether or not deductible in such taxable year or in subsequent taxable

years pursuant to paragraph (d) of such subdivision three, of thirty percent of the credit allowable under such subdivision three; provided, however, that the credit allowable under this subdivision for any taxable year shall only be allowed if the average number of employees employed by the taxpayer in the empire zone, designated pursuant to article eighteen-B of the general municipal law, in which such property is located during such taxable year is at least one hundred one percent of the average number of employees employed by the taxpayer in such empire zone, during the taxable year immediately preceding the taxable year for which the credit under such subdivision three is allowed and provided, further, that if the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which the credit under subdivision three of this section is allowed, the credit allowable under this subdivision for any taxable year shall be allowed if the average number of employees employed in such empire zone in such taxable year is at least one hundred one percent of the average number of such employees during the taxable year in which the credit under such subdivision three is allowed.

(b) Average number of employees. The average number of employees employed in an empire zone in a taxable year shall be computed by ascertaining the number of such employees within such zone except general executive officers, employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in the taxable year, by adding together the number of employees ascertained on each of such dates and dividing the sum so obtained by the number of such above-mentioned dates occurring within the taxable year.

(c) Carryover. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer, which is

approved as the owner of a qualified investment project or a significant capital investment project pursuant to subdivision (v) of section nine hundred fifty-nine of the general municipal law, may elect, on its report for its taxable year with respect to which such credit is allowed, to treat fifty percent of the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, in the case of such owner of a qualified investment project or a significant capital investment project, only fifty percent of the amount of such carryover which is attributable to the credit allowed under this subdivision with respect to property which is part of such project shall be allowed to be credited or refunded and such owner shall be allowed such credit or refund only for those taxable years in which such owner would be allowed a credit or refund of the empire zone investment tax credit pursuant to paragraph (d) of subdivision three of this section. Provided, further, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(c-1) Any carryover of a credit from prior taxable years will not be allowed if an empire zone retention certificate is not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis of the credit.

(d) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law, a taxpayer that is certified as a qualified investment project pursuant to such article eighteen-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed certified under such article eighteen-B for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years. In addition, the areas designated as empire zones in which the taxpayer is certified as a qualified investment project on the day immediately preceding the day the empire zones program expired shall continue to be deemed empire zones for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years.

(e) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law and except as provided in paragraph (d) of this subdivision, a taxpayer that is certified as an empire zone business pursuant to such article eighteen-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed in the empire zone in which the taxpayer was certified as an empire zone business on the day immediately preceding the day the empire zones program expired for each of the three years next succeeding the taxable year for which the credit under subdivision three of this section is allowed.

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided,

however, this paragraph shall not apply to a taxpayer with a zone allocation factor of one hundred percent.

7. Qualified emerging technology company employment credit. (a) Application of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, provided:

(i) the taxpayer is a qualified emerging technology company pursuant to the provisions of section thirty-one hundred two-e of the public authorities law; and

(ii) the average number of individuals employed full time by the taxpayer in New York state during the taxable year is at least one hundred one percent of the taxpayer's base year employment. For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the state during the three taxable years immediately preceding the first taxable year in which the credit is claimed. Where the taxpayer provided full-time employment within the state during only a portion of such three-year period, then the first effective date for the company to take advantage of this credit shall be the next year following the first full taxable year that the company had full-time employment in New York state. For the purposes of this paragraph the term "three years" shall be deemed to refer instead to the prior year's full-time employment after the first year and the average of the first eight quarters of employment after the first two taxable years in New York state.

(b) Credit limitation. The credit shall be allowed only in the first taxable year in which the credit is claimed and in each of the next two taxable years, provided that the conditions of paragraph (a) of this subdivision are satisfied in each taxable year.

(c) Average number of individuals employed full-time. For the purposes of this subdivision, average number of individuals employed full-time shall be computed by adding the number of such individuals employed by the taxpayer at the end of each quarter during each taxable year or other applicable period and dividing the sum so obtained by the number of such quarters occurring within such taxable year or other applicable period; provided however, except that in computing base year employment, there shall be excluded therefrom any employee with respect to whom a

credit provided for under subdivision nineteen of section two hundred ten of this article, as such subdivision was in effect on December thirty-first, two thousand fourteen, was claimed for the taxable year.

(d) Amount of credit. The amount of the credit shall equal the product of one thousand dollars times the number of individuals employed full-time by the taxpayer in the taxable year that are in excess of one hundred percent of the taxpayer's base year employment.

(e) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

8. Qualified emerging technology company capital tax credit. (a) Amount of credit. A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to one of the following percentages, per each qualified investment in a qualified emerging technology company as defined in section thirty-one hundred two-e of the public authorities law, made during the taxable year, and certified by the commissioner, either:

(1) ten percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the four years following the year in which the credit is first claimed; or

(2) twenty percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the nine years following the year in which the credit is first claimed.

(b) Qualified investment. "Qualified investment" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity not in corporate or partnership form in exchange for an ownership interest in such entity. The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed one hundred fifty thousand dollars in the case of investments made pursuant to subparagraph one of paragraph (a) of this subdivision and shall not exceed three hundred thousand dollars in the case of investments made pursuant to subparagraph two of paragraph (a) of this subdivision.

(c) Carryover. In no event shall the credit and carryover of such credit allowed under this subdivision for any taxable year, in the aggregate, reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence of this paragraph, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years. In addition, the amount of such credit, and carryovers of such credit to the taxable year, deducted from the tax otherwise due may not, in the aggregate, exceed fifty percent of the tax imposed under

section two hundred nine of this article computed without regard to any credit provided for by this section.

(d) Recapture. (1) Where a taxpayer sells, transfers or otherwise disposes of corporate stock, a partnership interest or other ownership interest arising from the making of a qualified investment which was the basis, in whole or in part, for the allowance of the credit provided for under subparagraph one of paragraph (a) of this subdivision, or where an investment which was the basis for such allowance is, in whole or in part, recovered by such taxpayer, and such disposition or recovery occurs during the taxable year or within forty-eight months from the close of the taxable year with respect to which such credit is allowed, the taxpayer shall add back, with respect to the taxable year in which the disposition or recovery described above occurred, the required portion of the credit originally allowed.

(2) Where a taxpayer sells, transfers or otherwise disposes of corporate stock, a partnership interest or other ownership interest arising from the making of a qualified investment which was the basis, in whole or in part, for the allowance of the credit provided for under subparagraph two of paragraph (a) of this subdivision, or where an investment which was the basis for such allowance is in any manner, in whole or in part, recovered by such taxpayer, and such disposition or recovery occurs during the taxable year or within one hundred eight months from the close of the taxable year with respect to which such credit is allowed, the taxpayer shall add back, with respect to the taxable year in which the disposition or recovery described in subparagraph one of this paragraph occurred the required portion of the credit originally allowed.

(3) The required portion of the credit originally allowed shall be the product of (A) the portion of such credit attributable to the property disposed of and (B) the applicable percentage.

(4) The applicable percentage shall be:

(A) for credits allowed pursuant to subparagraph one of paragraph (a) of this subdivision:

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

(ii) seventy-five percent, if the disposition or recovery occurs more

than twelve but not more than twenty-four months after the end of the taxable year with respect to which the credit is allowed,

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

(iv) twenty-five percent, if the disposition or recovery occurs more than thirty-six months but not more than forty-eight months after the end of the taxable year with respect to which the credit is allowed; or

(B) for credits allowed pursuant to subparagraph two of paragraph (a) of this subdivision:

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

(ii) eighty percent, if the disposition or recovery occurs more than twelve but not more than forty-eight months after the end of the taxable year with respect to which the credit is allowed,

(iii) sixty percent, if the disposition or recovery occurs more than forty-eight months but not more than seventy-two months after the end of the taxable year with respect to which the credit is allowed,

(iv) forty percent, if the disposition or recovery occurs more than seventy-two months but not more than ninety-six months after the end of the taxable year with respect to which the credit is allowed, or

(v) twenty percent, if the disposition or recovery occurs more than ninety-six months but not more than one hundred eight months after the end of the taxable year with respect to which the credit is allowed.

9. Credit for the special additional mortgage recording tax. (a) Application of credit. A taxpayer shall be allowed a credit, to be credited against the tax imposed by this article, equal to the amount of the special additional mortgage recording tax paid by the taxpayer pursuant to the provisions of subdivision one-a of section two hundred fifty-three of this chapter on mortgages recorded. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in one or more of the counties

comprising the metropolitan commuter transportation area. Provided further, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in the county of Erie.

(b) Carryover or refund. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowable under this subdivision for any taxable year, including any credit carried over from a prior taxable year, reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of carrying over to the following year or years, the unused portion of credits attributable to the special additional mortgage recording tax paid by the taxpayer as mortgagee with respect to mortgages of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, such taxpayer may elect to treat such unused portion as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter, except that no interest shall be paid on such overpayment.

10. Credit for servicing certain mortgages. (a) General. Every taxpayer meeting the requirements of the state of New York mortgage agency applicable to the servicing of mortgages acquired by such agency pursuant to the state of New York mortgage agency act, which shall have entered into a contract with the state of New York mortgage agency to service mortgages acquired by such agency pursuant to the state of New York mortgage agency act, shall have credited to it annually an amount equal to two and ninety-three one hundredths per centum of the total principal and interest collected by the taxpayer during its taxable year on each such mortgage secured by a lien on real estate improved by a

one-family to four-family residential structure and an amount equal to the interest collected by the taxpayer during its taxable year on each such mortgage secured by a lien on real property improved by a structure occupied as the residence of five or more families living independently of each other, multiplied by a fraction the denominator of which shall be the interest rate payable on the mortgage (computed to five decimal places) and the numerator of which shall be .00125 in the case of such a mortgage acquired by such agency for less than one million dollars, and .00100 in the case of such a mortgage acquired by such agency for one million dollars or more. In no event shall the credit allowed under this subdivision reduce the tax to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. In computing such tax credit for the servicing of mortgages on one-family to four-family residential structures, the taxpayer shall not be entitled to credit for the collection of curtailment or payments in discharge of any such mortgage. For the purposes of this subdivision,

(b)(i) a "curtailment" shall mean amounts paid by mortgagors

(A) in excess of the monthly constant due during the month of collection and

(B) in reduction of the unpaid principal balance of the mortgage; in the absence of clear evidence to the contrary, amounts paid in excess of the monthly constant due during the month of collection shall be deemed to be in reduction of the unpaid principal balance of the mortgage; and

(ii) "monthly constant" shall mean the amount of principal and interest which is due and payable according to the mortgage documents on each periodic payment date.

11. Agricultural property tax credit. (a) General. In the case of a taxpayer which is an eligible farmer or an eligible farmer who has paid taxes pursuant to a land contract, there shall be allowed a credit for the allowable school district property taxes. The term "allowable school district property taxes" means the school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph (e) of this subdivision and the income limitation provided in paragraph (f) of this subdivision.

(a-1) New York gross income from farming. For purposes of this

subdivision, the term "New York gross income from farming" means a taxpayer's federal gross income from farming, plus payments from the state's farmland protection program, administered by the department of agriculture and markets, income from a commercial horse boarding operation as defined by subdivision thirteen of section three hundred one of the agriculture and markets law, and income from the production or sale of maple syrup, Christmas trees, and cider or wine from a licensed New York state farm cidery or winery, as provided for in section fifty-eight-c and article six of the alcoholic beverage control law.

(b) Eligible farmer. For purposes of this subdivision, the term "eligible farmer" means a taxpayer whose New York gross income from farming for the taxable year, or whose average New York gross income from farming for the current year and two prior taxable years, is at least two-thirds of such taxpayer's federal gross income from all sources less thirty thousand dollars. The term "eligible farmer" also includes a corporation other than the taxpayer of record for qualified agricultural land which has paid the school district property taxes on such land pursuant to a contract for the future purchase of such land; provided that such corporation meets the definition of eligible farmer pursuant to this paragraph.

(c) School district property taxes. For purposes of this subdivision, the term "school district property taxes" means all property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied for school district purposes on the qualified agricultural property owned by the taxpayer.

(d) Qualified agricultural property. For purposes of this subdivision, the term "qualified agricultural property" means land located in this state which is used in agricultural production, and land improvements, structures and buildings (excluding buildings used for the taxpayer's residential purpose) located on such land which are used or occupied to carry out such production. Qualified agricultural property also includes land set aside or retired under a federal supply management or soil conservation program or land that at the time it becomes subject to a conservation easement met the requirements under this paragraph.

(e) Acreage limitation. (i) Eligible taxes. In the event that the qualified agricultural property owned by the taxpayer includes land in

excess of the base acreage as provided in this paragraph, the amount of school district property taxes eligible for credit under this subdivision shall be that portion of the school district property taxes which bears the same ratio to the total school district property taxes paid during the taxable year, as the acreage allowable under this paragraph bears to the entire acreage of such land.

(ii) Allowable acreage. The allowable acreage is the sum of the base acreage set forth below and fifty percent of the incremental acreage. The incremental acreage is the excess of the entire acreage of qualified agricultural land owned by the taxpayer over the base acreage. Except as provided in subparagraph (iii) of this paragraph, the base acreage is three hundred fifty acres.

The total base acreage may be increased by any acreage enrolled or participating during the taxable year in a federal environmental conservation acreage reserve program pursuant to title three of the federal agriculture improvement and reform act of nineteen hundred ninety-six.

(iii) Base acreage of related persons. Where the taxpayer and one or more related persons each own qualified agricultural property on the first day of March of any year, the base acreage under subparagraph (ii) of this paragraph shall be divided equally and allotted among the taxpayer and such related persons, and the taxpayer's base acreage for the taxable year which includes such March first shall be limited to its allotted share. Provided, however, if the taxpayer and all such related persons consent (at such time and in such manner as the commissioner may prescribe) to an unequal division, the taxpayer's base acreage for such taxable year shall be limited to its allotted share under such unequal division.

(iv) Related persons. (A) For purposes of subparagraph (iii) of this paragraph, the term "related person" means:

(I) a corporation subject to tax under this article, where the taxpayer and the corporation are members of the same controlled group, as defined in section 267(f) of the internal revenue code;

(II) an individual, partnership, estate or trust, where more than fifty percent in value of the outstanding stock of the taxpayer is owned, directly or indirectly, by or for such individual, partnership, estate or trust or by or for the grantor of such trust;

(III) a corporation subject to tax under this article, or a partnership, estate or trust, if the same person owns more than fifty percent in value of the outstanding stock of the taxpayer and more than fifty percent in value of the outstanding stock of the corporation, or more than fifty percent of the capital or profits interest in the partnership, or more than fifty percent of the beneficial interest in the estate or trust;

(IV) a partnership, estate or trust of which the taxpayer owns, directly or indirectly, more than fifty percent of the capital, profits or beneficial interest.

(B) In determining whether a person is a related person within the meaning of this subparagraph:

(I) stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries;

(II) an individual shall be considered as owning the stock owned, directly or indirectly, by or for his spouse;

(III) stock constructively owned by a person by reason of the application of item (I) of this clause shall, for the purpose of applying item (I) or (II) of this clause, be treated as actually owned by such person.

(f) Income limitation. (i) In the event that the modified entire net income of the taxpayer exceeds two hundred thousand dollars, the allowable school district property taxes under paragraph (a) of this subdivision shall be the eligible taxes under subparagraph (i) of paragraph (e) of this subdivision reduced by the product of the amount of such eligible taxes and a percentage, such percentage to be determined by multiplying one hundred percent by a fraction, the numerator of which is the lesser of one hundred thousand dollars or the excess of the taxpayer's modified entire net income over two hundred thousand dollars and the denominator of which is one hundred thousand dollars. For purposes of the preceding sentence, the term "eligible taxes", where the acreage limitation of paragraph (e) of this subdivision does not apply, shall mean the total school district property taxes paid during the taxable year.

(ii) The term "modified entire net income" means the entire net income for the taxable year reduced by the amount of principal paid on farm

indebtedness during the taxable year. The term "farm indebtedness" means debt incurred or refinanced which is secured by farm property, where the proceeds of the debt are disbursed for expenditures incurred in the business of farming.

(g) Carryover. In no event shall the credit provided herein be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. Provided, however, in lieu of carrying over the unused portion of such credit, the taxpayer may elect to treat such unused portion as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter except that no interest shall be paid on such overpayment.

(h) Nonqualified use. (i) No credit in conversion year. In the event that qualified agricultural property is converted by the taxpayer to nonqualified use, credit under this subdivision shall not be allowed with respect to such property for the taxable year of conversion (the conversion year).

(ii) Credit recapture. If the conversion by the taxpayer of qualified agricultural property to nonqualified use occurs during the period of the two taxable years following the taxable year for which the credit under this subdivision was first claimed with respect to such property, the credit allowed with respect to such property for the taxable years prior to the conversion year must be added back in the conversion year. Where the property converted includes land, and where the conversion is of only a portion of such land, the credit allowed with respect to the property converted shall be determined by multiplying the entire credit under this subdivision for the taxable years prior to the conversion year by a fraction, the numerator of which is the acreage converted and the denominator of which is the entire acreage of such land owned by the taxpayer immediately prior to the conversion.

(iii) Exception to recapture. Subparagraph (ii) of this paragraph

shall not apply to the conversion of property where the conversion is by reason of involuntary conversion, within the meaning of section one thousand thirty-three of the internal revenue code.

(iv) Conversion to nonqualified use. For purposes of this paragraph, a sale or other disposition of qualified agricultural property alone shall not constitute a conversion to a nonqualified use.

(j) Election to deem gross income of New York C corporation to shareholders. For purposes of this subdivision, federal gross income from farming shall be zero for any taxable year of a New York C corporation for which the election under paragraph nine of subsection (n) of section six hundred six of this chapter is in effect.

12. Credit for employment of persons with disabilities. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for employing within the state a qualified employee.

(b) Qualified employee. A qualified employee is an individual:

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

(2) who has worked on a full-time basis for the employer who is claiming the credit for at least one hundred eighty days or four hundred hours.

(c) Amount of credit. Except as provided in paragraph (d) of this subdivision, the amount of credit for taxable years beginning before January first, two thousand twenty-five shall be thirty-five percent of the first six thousand dollars in qualified first-year wages earned by each qualified employee and for taxable years beginning on or after January first, two thousand twenty-five shall be the first five thousand dollars in qualified first-year wages earned by each qualified employee. "Qualified first-year wages" means wages paid or incurred by the

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

(d) Credit where federal work opportunity tax credit applies. With respect to any qualified employee whose qualified first-year wages under paragraph (c) of this subdivision also constitute qualified first-year wages for purposes of the work opportunity tax credit for vocational rehabilitation referrals under section fifty-one of the internal revenue code, the amount of credit under this subdivision for taxable years beginning before January first, two thousand twenty-five shall be thirty-five percent of the first six thousand dollars in qualified second-year wages earned by each such employee and for taxable years beginning on or after January first, two thousand twenty-five shall be the first five thousand dollars in qualified second-year wages earned by each qualified employee. "Qualified second-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employee, to services rendered during the one-year period beginning one year after the employee begins work for the taxpayer.

(e) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

(f) Coordination with federal work opportunity tax credit. The provisions of section fifty-one and fifty-two of the internal revenue code, as such sections applied on October first, nineteen hundred ninety-six, that apply to the federal work opportunity tax credit for vocational rehabilitation referrals shall apply to the credit under this subdivision to the extent that such sections are consistent with the specific provisions of this subdivision, provided that in the event of a conflict the provisions of this subdivision shall control.

13. Credit for purchase of an automated external defibrillator. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter.

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

(b) Carryover. The credit allowed under this subdivision for any year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

(b) Application of credit. The credit and carryovers of such credit

allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years.

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

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

(b) Carryovers. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years.

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credits allowed under this subdivision for any taxable

year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

19. Environmental remediation insurance credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-three of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if

the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

20. Empire state film production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four of this chapter shall be allowed a credit to be computed as provided in such section twenty-four against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

20-a. Empire state independent film production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four-d of this chapter shall be allowed a credit to be computed as provided in such section twenty-four-d against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum

amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

21. Security training tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. However, if the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

22. Conservation easement tax credit. (a) Credit allowed. In the case of a taxpayer who owns land that is subject to a conservation easement held by a public or private conservation agency, there shall be allowed a credit for twenty-five percent of the allowable school district, county and town real property taxes on such land. In no such case shall the credit allowed under this subdivision in combination with any other credit for such school district, county and town real property taxes under this section exceed such taxes.

(b) Conservation easement. For purposes of this subdivision, the term "conservation easement" means a perpetual and permanent conservation easement as defined in article forty-nine of the environmental conservation law that serves to protect open space, scenic, natural resources, biodiversity, agricultural, watershed and/or historic preservation resources. Any conservation easement for which a tax credit is claimed under this subdivision shall be filed with the department of

environmental conservation, as provided for in article forty-nine of the environmental conservation law and such conservation easement shall comply with the provisions of title three of such article, and the provisions of subdivision (h) of section 170 of the internal revenue code. Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered a conservation easement under this subdivision.

(c) Land. For purposes of this subdivision, the term "land" means a fee simple title to real property located in this state, with or without improvements thereon; rights of way; water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property, excluding buildings, structures, or improvements.

(d) Public or private conservation agency. For purposes of this subdivision, the term "public or private conservation agency" means any state, local, or federal governmental body; or any private not-for-profit charitable corporation or trust which is authorized to do business in the state of New York, is organized and operated to protect land for natural resources, conservation or historic preservation purposes, is exempt from federal income taxation under section 501(c)(3) of the internal revenue code, and has the power to acquire, hold and maintain land and/or interests in land for such purposes.

(e) Credit limitation. The amount of the credit that may be claimed by a taxpayer pursuant to this subsection shall not exceed five thousand dollars in any given year.

(f) Application of the credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of the credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of subsection (c) of section one thousand eighty-eight of this chapter, except that, no interest

shall be paid thereon.

23. Empire state commercial production credit. (a) Allowance of credit. A taxpayer that is eligible pursuant to provisions of section twenty-eight of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(c) Expiration of credit. The credit allowed under this subdivision shall not be applicable to taxable years beginning on or after January first, two thousand twenty-nine.

24. Biofuel production credit. (a) General. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-eight of this chapter added as part X of chapter sixty-two of the laws of two thousand six, against the tax imposed by this article. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount

prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

25. Clean heating fuel credit. (a) General. A taxpayer shall be allowed a credit against the tax imposed by this article. Such credit, to be computed as hereinafter provided, shall be allowed for bioheating fuel, used for space heating or hot water production for residential purposes within this state purchased before January first, two thousand twenty-nine. Such credit shall be \$0.01 per percent of biodiesel per gallon of bioheating fuel, not to exceed twenty cents per gallon, purchased by such taxpayer. Provided, however, that on or after January first, two thousand seventeen, this credit shall not apply to bioheating fuel that is less than six percent biodiesel per gallon of bioheating fuel.

(b) Definitions. For purposes of this subdivision, the following definitions shall apply:

(i) "Biodiesel" shall mean a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751.

(ii) "Bioheating fuel" shall mean a fuel comprised of biodiesel or renewable hydrocarbon diesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials designation D 396 or D 975.

(c) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of

subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

26. Credit for rehabilitation of historic properties. (a) Application of credit. (i) For taxable years beginning on or after January first, two thousand ten, and before January first, two thousand thirty, a taxpayer, or a transferee of such a taxpayer as described in paragraph (g) of this subdivision, shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer for the same taxable year with respect to a certified historic structure, and one hundred fifty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure that is a small project, under internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47, with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars.

(ii) For taxable years beginning on or after January first, two thousand thirty, a taxpayer, or a transferee of such a taxpayer as described in paragraph (g) of this subdivision, shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer for the same taxable year determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of section 47 of the internal revenue code, with respect to a certified historic structure under subsection (c)(3) of section 47 of the internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(a-1) If the taxpayer or transferee is a partner in a partnership or a shareholder in a New York S corporation, then the credit caps imposed in paragraph (a) of this subdivision shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed the credit cap that is applicable in that taxable year.

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

(c) If the taxpayer is allowed a credit pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subdivision and that credit pursuant to such section 47 is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subdivision must be added back by the taxpayer or transferee in the same taxable year and in the same proportion as the federal credit.

(d) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be recredited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(e) To be eligible for the credit allowable under this subdivision, the rehabilitation project shall be in whole or in part located within a census tract which is identified as being at or below one hundred percent of the state median family income as calculated as of April first of each year using the most recent five year estimate from the American community survey published by the United States Census bureau. If there is a change in the most recent five year estimate, a census tract that qualified for eligibility under this program before

information about the change was released will remain eligible for a credit under this subdivision for an additional two calendar years. The eligibility restrictions set forth in this paragraph shall not be applicable if:

(i) a qualified rehabilitation project is undertaken within a state park, state historic site, or other land owned by the state, that is under the jurisdiction of the office of parks, recreation and historic preservation; or

(ii) a qualified rehabilitation project is undertaken for the provision of affordable housing and the taxpayer has entered into a regulatory agreement with any state or federal agency or authority, or any other government entity that is authorized to engage in the financing, construction or oversight of affordable housing within such entity's jurisdiction, and where such regulatory agreement sets forth affordability requirements applicable for a period of not less than thirty years and that is binding on all successors of the taxpayer.

(f) For purposes of this subdivision "small project" means qualified rehabilitation expenditures totaling two million five hundred thousand dollars or less.

(g)(i) A taxpayer allowed a credit pursuant to this subdivision may transfer the credit, in whole or in part, to another person or entity, who shall be referred to as the transferee, without regard to how any tax credit authorized pursuant to section forty-seven of the internal revenue code with respect to a qualified rehabilitation project may be allocated and notwithstanding that such other person or entity owns no interest in the qualified rehabilitation project or in an entity with an ownership interest in the qualified rehabilitation project. A transferee may not transfer any credit, or portion thereof, acquired by transfer.

(ii) A taxpayer seeking to transfer a credit allowed pursuant to this subdivision must enter into a transfer contract with the transferee. The transfer contract must specify:

(A) the building identification numbers for all buildings in the project;

(B) the date each building was placed into service;

(C) the schedule of years for which the transfer credit may be claimed and the amount of credit previously claimed;

(D) the amount of consideration received by the taxpayer for the

transfer credit; and

(E) the amount of credit being transferred.

(iii) No transfer shall be effective unless the taxpayer allowed a credit pursuant to this subdivision and seeking to transfer the credit files a transfer application with the commissioner of parks, recreation and historic preservation prior to the transfer and such transfer application is approved. The transfer application shall include the name and federal identification numbers of the taxpayer and each proposed transferee, the amount of credit proposed to be transferred to each proposed transferee, a copy of the transfer contract, and such other information as the commissioner or the commissioner of parks, recreation and historic preservation may require. The commissioner of parks, recreation and historic preservation shall approve or deny each transfer application and, if an application is denied, shall issue a written determination to the taxpayer. If the transfer is approved, the commissioner of parks, recreation and historic preservation shall issue a transfer approval certificate that provides the name of the transferor and all transferees, the amount of credit being transferred and such other information as the commissioner of parks, recreation and historic preservation and the commissioner deem necessary. A copy of the transfer approval certificate must be attached to each transferee's tax return. The commissioner of parks, recreation and historic preservation, in consultation with the commissioner, may establish such other procedures and standards deemed necessary for the transferability of credits allowed under this subdivision.

(iv) The commissioner of parks, recreation and historic preservation shall forward copies of all transfer applications and attachments thereto and approval certificates to the commissioner within thirty days after the transfer is approved.

(v) A taxpayer allowed a credit pursuant to section forty-seven of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subdivision shall remain solely liable for all obligations and liabilities imposed on the taxpayer with respect to the credit allowed by this subdivision, none of which shall apply to a party to whom the credit has been subsequently transferred.

27. Credits of New York S corporations. (a) General. Notwithstanding the provisions of this section, no carryover of credit allowable in a New York C year shall be deducted from the tax otherwise due under this article in a New York S year, and no credit allowable in a New York S year, or carryover of such credit, shall be deducted from the tax imposed by this article. However, a New York S year shall be treated as a taxable year for purposes of determining the number of taxable years to which a credit may be carried over under this section. Notwithstanding the first sentence of this subdivision, however, the credit for the special additional mortgage recording tax shall be allowed as provided in subdivision nine of this section, and the carryover of any such credit shall be determined without regard to whether the credit is carried from a New York C year to a New York S year or vice-versa.

29. Hire a vet credit. (a) Allowance of credit. For taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand twenty-nine, a taxpayer shall be allowed a credit, to be computed as provided in this subdivision, against the tax imposed by this article, for hiring and employing, for not less than twelve continuous and uninterrupted months (hereinafter referred to as the twelve-month period) in a full-time or part-time position, a qualified veteran within the state. The taxpayer may claim the credit in the year in which the qualified veteran completes the twelve-month period of employment by the taxpayer. If the taxpayer claims the credit allowed under this subdivision, the taxpayer may not use the hiring of a qualified veteran that is the basis for this credit in the basis of any other credit allowed under this article.

(b) Qualified veteran. A qualified veteran is an individual:

(1) who served on active duty in the United States army, navy, air force, space force, marine corps, coast guard or the reserves thereof, or who served in active military service of the United States as a member of the army national guard, air national guard, New York guard or New York naval militia, or who served in the active uniformed services of the United States as a member of the commissioned corps of the national oceanic and atmospheric administration or the commissioned corps of the United States public health service; who (i) was released

from such service, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service;

(2) who commences employment by the qualified taxpayer on or after January first, two thousand fourteen, and before January first, two thousand twenty-eight; and

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

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

(d) Amount of credit. The amount of the credit shall be fifteen percent of the total amount of wages paid to the qualified veteran during the veteran's first twelve-month period of employment. Provided, however, that, if the qualified veteran is a disabled veteran, as defined in paragraph (b) of subdivision one of section eighty-five of the civil service law, the amount of the credit shall be twenty percent of the total amount of wages paid to the qualified veteran during the veteran's first twelve-month period of employment. The credit allowed pursuant to this subdivision shall not exceed in any taxable year: (1) fifteen thousand dollars for any qualified veteran, other than a disabled veteran, employed in a full-time position for one thousand eight hundred twenty or more hours in one twelve-month period, (2) twenty thousand dollars for any qualified veteran who is a disabled veteran employed in a full-time position for one thousand eight hundred twenty or more hours in one twelve-month period, (3) seven thousand five hundred dollars for any qualified veteran, other than a disabled veteran, employed in a part-time position for at least one thousand forty hours but not more than one thousand eight hundred nineteen hours in one twelve-month period, and (4) ten thousand dollars for any qualified veteran who is a disabled veteran employed in a part-time position for at least one thousand forty hours but not more than one

thousand eight hundred nineteen hours in one twelve-month period.

(e) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following three years and may be deducted from the taxpayer's tax for such year or years.

30. Alternative fuels and electric vehicle recharging property credit.

(a) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article for alternative fuel vehicle refueling and electric vehicle recharging property placed in service during the taxable year.

(b) (i) Alternative fuel vehicle refueling property and electric vehicle recharging property. The credit under this subdivision for alternative fuel vehicle refueling property and electric vehicle recharging property shall equal for each installation of property the lesser of five thousand dollars or the product of fifty percent and the cost of any such property less any costs paid from the proceeds of grants.

(ii) To qualify for the credit, the property must:

(A) be located in this state;

(B) must constitute alternative fuel vehicle refueling property or electric vehicle recharging property; and

(C) not be paid for from the proceeds of grants awarded before January first, two thousand fifteen, including grants from the New York state energy research and development authority or the New York power authority.

(c) Definitions. (i) The term "alternative fuel vehicle refueling property" means all of the equipment needed to dispense any fuel at least eighty-five percent of the volume of which consists of one or more of the following: natural gas, liquified natural gas, liquified petroleum, or hydrogen.

(ii) The term "electric vehicle recharging property" means all of the

equipment needed to convey electric power from the electric grid or another power source to an onboard vehicle energy storage system.

(d) Carryovers. In no event shall the credit under this subdivision be allowed in an amount which will reduce the tax payable to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(e) Credit recapture. If, at any time before the end of its recovery period, alternative fuel vehicle refueling or electric vehicle recharging property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(i) Alternative fuel vehicle refueling property or electric vehicle recharging property ceases to be qualified if:

(I) the property no longer qualifies as alternative fuel vehicle refueling property or electric vehicle recharging property; or

(II) fifty percent or more of the use of the property in a taxable year is other than in a trade or business in this state; or

(III) the taxpayer receiving the credit under this subdivision sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in clauses (I) and (II) of this subparagraph.

(ii) Recapture amount. The recapture amount is equal to the credit allowable under this subdivision multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

(f) Termination. The credit allowed by paragraph (b) of this subdivision shall not apply in taxable years beginning after December thirty-first, two thousand twenty-eight.

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

32. Empire state film post production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section thirty-one of this chapter shall be allowed a credit to be computed as provided in such section thirty-one against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be a carryover to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid

thereon.

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

(b) Application of credit. In no event shall the credit under this subdivision be allowed in an amount which will reduce the tax to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided however, that no interest shall be paid thereon.

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less

than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

36. New York youth jobs program tax credit. (a) A taxpayer that has been certified by the commissioner of labor as a qualified employer pursuant to section twenty-five-a of the labor law and received an annual final certificate of tax credit from such commissioner shall be allowed a credit against the tax imposed by this article equal to the amount listed on the annual final certificate of tax credit issued by the commissioner of labor pursuant to section twenty-five-a of the labor law. If the qualified employer's taxable year is a calendar year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the calendar year return for which the annual final certificate of tax credit was issued. If the qualified employer's taxable year is a fiscal year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the return for the fiscal year that encompasses the date on which the annual final certificate of tax credit is issued. For the purposes of this subdivision, the term "qualified employee" shall have the same meaning as set forth in subdivision (b) of section twenty-five-a of the labor law.

(b) The credit allowed under this subdivision for any taxable year may not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to that amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in

accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, no interest will be paid thereon.

(c) The taxpayer shall be required to attach to its tax return its annual final certificate of tax credit issued by the commissioner of labor pursuant to section twenty-five-a of the labor law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the annual final certificate of tax credit.

Notwithstanding any provision of this chapter to the contrary, the commissioner and the commissioner's designees may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

37. Empire state jobs retention program credit. (a) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section thirty-six of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year will not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

38. Credit for companies who provide transportation to individuals with disabilities. (a) Allowance and amount of credit. A taxpayer, who provides a taxicab service as defined in section one hundred forty-eight-a of the vehicle and traffic law, or a livery service as defined in section one hundred twenty-one-e of the vehicle and traffic

law, shall be allowed a credit, to be computed as provided in this subdivision, against the tax imposed by this article. The amount of the credit shall be equal to the incremental cost associated with upgrading a vehicle so that it is accessible by individuals with disabilities as defined in paragraph (b) of this subdivision. Provided, however, that such credit shall not exceed fifteen thousand dollars per electric vehicle and ten thousand dollars per any other vehicle. For purposes of this subdivision, purchases of new vehicles that are initially manufactured to be accessible for individuals with disabilities and for which there is no comparable make and model that does not include the equipment necessary to provide accessibility to individuals with disabilities, the credit shall be fifteen thousand dollars per electric vehicle and ten thousand dollars per any other vehicle.

(b) Definitions. The term "accessible by individuals with disabilities" shall, for the purposes of this subdivision, refer to a vehicle that complies with federal regulations promulgated pursuant to the Americans with Disabilities Act applicable to vans under twenty-two feet in length, by the federal Department of Transportation, in Code of Federal Regulations, title 49, parts 37 and 38 and the Federal Motor Vehicle Safety Standards, Code of Federal Regulations, title 49, part 571. The term "electric vehicle" shall, for the purposes of this subdivision, have the same meaning as in section sixty-six-s of the public service law.

(c) Application of credit. In no event shall the credit allowed under this subdivision for any taxable year reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years. The tax credit allowed pursuant to this subdivision shall not apply to taxable years beginning on or after January first, two thousand twenty-nine.

39. Alcoholic beverage production credit. A taxpayer shall be allowed

a credit, to be computed as provided in section thirty-seven of this chapter, against the tax imposed by this article. In no event shall the credit allowed under this subdivision for any taxable year reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

40. Minimum wage reimbursement credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section thirty-eight of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

41. The tax-free NY area tax elimination credit. A taxpayer shall be allowed a credit to be computed as provided in section forty of this chapter, against the tax imposed by this article. Unless the taxpayer has a tax-free NY area allocation factor of one hundred percent, the credit allowed under this subdivision for any taxable year shall not

reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

42. Alternative base credit. (a) If the tax imposed on a taxpayer by subdivision one of section two hundred nine of this article is the amount prescribed in clause (ii) of subparagraph one of paragraph (b) of subdivision one of section two hundred ten of this article, the taxpayer shall be allowed a credit against the tax imposed under this article equal to the amount of tax paid to another state computed on a tax base identical to the tax base prescribed in such paragraph (b). If the tax imposed on a taxpayer by subdivision one of section two hundred nine of this article is the highest amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article applicable to the taxpayer, the taxpayer shall be allowed a credit against the tax imposed under this article equal to the amount of tax paid to another state computed on a tax base identical to the tax base prescribed in such paragraph (d).

(b) In no event shall the credit allowed under this subdivision for any taxable year reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

43. Real property tax credit for manufacturers. (a) A qualified New

York manufacturer, as defined in subparagraph (vi) of paragraph (a) of subdivision one of section two hundred ten of this article, will be allowed a credit equal to twenty percent of the real property tax it paid during the taxable year for real property owned by such manufacturer in New York which was principally used during the taxable year for manufacturing to the extent not deducted in determining entire net income. This credit will not be allowed if the real property taxes that are the basis for this credit are included in the calculation of another credit claimed by the taxpayer.

(b) (1) For purposes of this subdivision, the term real property tax means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to article eighteen or nineteen of the real property tax law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by such article eighteen or nineteen, whichever is applicable. The term real property tax does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when (i) the property subject to the charge is limited to the property that benefits from the charge, or (ii) the amount of the charge is determined by the benefit to the property assessed, or (iii) the improvement for which the charge is assessed tends to increase the property value.

(2) In addition, the term real property tax includes taxes paid by the taxpayer upon real property principally used during the taxable year by the taxpayer in manufacturing where the taxpayer leases such real property from an unrelated third party if the following conditions are satisfied: (i) the tax must be paid by the taxpayer as lessee pursuant to explicit requirements in a written lease, and (ii) the taxpayer as lessee has paid such taxes directly to the taxing authority and has received a written receipt for payment of taxes from the taxing authority. In the case of a combined group that constitutes a qualified New York manufacturer, the conditions in the preceding sentence are satisfied if one corporation in the combined group is the lessee and

another corporation in the combined group makes the payments to the taxing authority. In the case of a taxpayer that, during the taxable year, is principally engaged in the production of goods by farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, the taxpayer is eligible if the taxpayer satisfies the conditions stipulated in this subdivision and the taxpayer leases such real property from a related or unrelated party.

(3) The term real property tax does not include a payment made by the taxpayer in connection with an agreement for the payment in lieu of taxes on real property, whether such property is owned or leased by the taxpayer.

(4) The real property taxes must be paid by the taxpayer in the year such taxes become a lien on the real property.

(c) Credit recapture. Where a qualified New York manufacturer's real property taxes which were the basis for the allowance of the credit provided for under this subdivision are subsequently reduced as a result of a final order in any proceeding under article seven of the real property tax law or other provision of law, the taxpayer shall add back, in the taxable year in which such final order is issued, the excess of (1) the amount of credit originally allowed for a taxable year over (2) the amount of credit determined based upon the reduced real property taxes. If such final order reduces real property taxes for more than one year, the taxpayer must determine how much of such reduction is attributable to each year covered by such final order and calculate the amount of credit which is required by this subdivision to be recaptured for each year based on such reduction.

(d) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than twenty-five dollars.

44. The tax-free NY area excise tax on telecommunication services credit. A taxpayer that is a business or owner of a business that is located in a tax-free NY area approved pursuant to article twenty-one of the economic development law shall be allowed a credit equal to the excise tax on telecommunication services imposed by section one hundred eighty-six-e of this chapter and passed through to such business during the taxable year to the extent not otherwise deducted in computing

entire net income under this article. However, except as otherwise provided for in this subdivision, if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. This credit may be claimed only where any tax imposed by such section one hundred eighty-six-e has been separately stated on a bill from the provider of telecommunication services and paid by such business with respect to such services rendered within a tax-free NY area during the taxable year. Unless the taxpayer has a tax-free NY area allocation factor of one hundred percent, the credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

45. Order of credits. Credits allowable under this article which cannot be carried over and which are not refundable shall be deducted first. Credits allowable under this article which can be carried over, and carryovers of such credits, shall be deducted next, and among such credits, those whose carryover is of limited duration shall be deducted before those whose carryover is of unlimited duration. Credits allowable under this article which are refundable shall be deducted last.

46. Notwithstanding the repeal of the credit provisions contained in section two hundred ten of this article or in article thirty-two of this chapter and the enactment of this section by a chapter of the laws of two thousand fourteen:

(a) A taxpayer shall be allowed to utilize any carryforward amounts of credits to which the taxpayer was entitled as of the close of the taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand fifteen, other than the

carryforward amount of the minimum tax credit provided under subdivision thirteen of section two hundred ten, as that subdivision was in effect on December thirty-first, two thousand fourteen.

(b) A taxpayer shall be required in a taxable year beginning on or after January first, two thousand fifteen, to recapture all or a portion of a credit allowed under a credit provision in section two hundred ten or article thirty-two of this chapter for a taxable year beginning prior to January first, two thousand fifteen if recapture would have been required under such credit provision.

* 47. Musical and theatrical production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four-a of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, further, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB Repealed January 1, 2030

48. Workers with disabilities tax credit. (a) A qualified employer, as defined in paragraph one of subdivision (b) of section twenty-five-b of the labor law, shall be entitled to a credit against the tax imposed by this article. The amount of the credit shall be: fifteen percent of the qualified wages paid after January first, two thousand fifteen to a qualified full-time employee who is employed for not less than six months and who works at least thirty hours per week; and shall be ten percent of the qualified wages paid after January first, two thousand fifteen to a qualified part-time employee who is employed for not less than six months and works at least eight hours per week. The credit

allowed pursuant to this subdivision shall not exceed, during any taxable year, five thousand dollars for any qualified full time employee and two thousand five hundred dollars for any qualified part time employee. "Qualified wages" means wages paid or incurred by the qualified employer during the taxable year to a qualified employee which are attributable, with respect to such employee, to services rendered by the qualified employee.

(b) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following three years, and may be deducted from the qualified employer's tax for such years.

(c) The taxpayer shall attach to its tax return its final certificate of eligibility issued by the commissioner of labor pursuant to section twenty-five-b of the labor law for each taxable year that the credit is claimed. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the final certificate of eligibility. Notwithstanding any provision of this chapter to the contrary, the commissioner and the commissioner's designees may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer.

(d) A qualified employer may not claim the workers with disabilities tax credit if it claims any of the other credits for employment of persons with disabilities under either subsection (o) of section six hundred six, subdivision twelve of this section, or subdivision (j) of section fifteen hundred eleven of this chapter.

49. Empire state apprenticeship tax credit. (a) A taxpayer that has been certified by the commissioner of labor as a certified employer pursuant to section twenty-five-c of the labor law shall be allowed a credit against the tax imposed by this article equal to the amount specified under subdivision (c) of section twenty-five-c of the labor law. In no event shall the taxpayer be allowed a credit greater than the

amount of the credit listed on the final certificate of eligibility.

(b) The credit allowed under this subdivision for any taxable year may not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to that amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, no interest will be paid thereon.

50. Employee training incentive program tax credit. (a) For taxable years beginning before January first, two thousand twenty-nine, a taxpayer that has been approved by the commissioner of economic development to participate in the employee training incentive program and has been issued a certificate of tax credit pursuant to section four hundred forty-three of the economic development law shall be allowed to claim a credit against the tax imposed by this article. The credit shall equal fifty percent of a taxpayer's eligible training costs, up to a credit of ten thousand dollars per employee completing eligible training pursuant to paragraph (a) of subdivision three of section four hundred forty-one of the economic development law. The credit shall equal fifty percent of the stipend paid to an intern, up to a credit of three thousand dollars per intern completing eligible training pursuant to paragraph (b) of subdivision three of section four hundred forty-one of the economic development law. In no event shall a taxpayer be allowed a credit greater than the amount of credit listed on the certificate of tax credit issued by the commissioner of economic development. The credit will be allowed in the taxable year in which the eligible training is completed.

(b) The credit allowed under this subdivision for any taxable year may not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount

of credit thus not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

(c) The taxpayer may be required to attach to its tax return its certificate of tax credit issued by the commissioner of economic development pursuant to section four hundred forty-three of the economic development law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed in the certificate of tax credit, or in the case of a taxpayer who is a partner in a partnership or a member of a limited liability company, its pro rata share of the amount of credit listed in the certificate of tax credit issued to the partnership or limited liability company.

51. Farm workforce retention credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-two of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* 52. Life sciences research and development tax credit. (a) Allowance of credit. A taxpayer that is eligible pursuant to section forty-three of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision

for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, further, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB There are 2 sb 52's

* 52. Credit for farm donations to food pantries. (a) General. In the case of a taxpayer that is an eligible farmer, there shall be allowed a credit, to be computed as hereinafter provided against the tax imposed by this article for taxable years beginning on and after January first, two thousand eighteen. The amount of the credit shall be twenty-five percent of the fair market value of the taxpayer's qualified donations made to any eligible food pantry during the taxable year, not to exceed five thousand dollars per taxable year for taxable years ending before January first, two thousand twenty-six, and fifty percent of the fair market value of the taxpayer's qualified donations made to any eligible food pantry during the taxable year, not to exceed twenty thousand dollars per taxable year, for taxable years beginning on and after January first, two thousand twenty-six. If the taxpayer is a partner in a partnership, then the cap imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed to all partners of such entity in the taxable year does not exceed five thousand dollars for taxable years ending before January first, two thousand twenty-six, and twenty thousand dollars for taxable years beginning on and after January first, two thousand twenty-six.

(b) Eligible farmer. For purposes of this subdivision, the term "eligible farmer" shall have the same meaning as set forth subdivision eleven of this section.

(c) Qualified donation. For purposes of this subdivision, the term "qualified donation" means a donation of apparently wholesome food, as defined in section 170(e)(3)(C)(vi) of the internal revenue code, grown

or produced within this state, by an eligible farmer to an eligible food pantry.

(d) Eligible food pantry. For purposes of this subdivision, the term "eligible food pantry" means any food pantry, food bank, or other emergency food program operating within this state that has qualified for tax exemption under section 501(c)(3) of the internal revenue code.

(e) Determination of fair market value. For purposes of this subdivision, to determine the fair market value of apparently wholesome food donated to an eligible food pantry, the standards set forth under section 170(e)(3)(C)(v) of the internal revenue code shall apply.

(f) Record of donation. To claim a credit under this subdivision, a taxpayer must get and keep a receipt from the eligible food pantry showing: (i) the name of the eligible food pantry; (ii) the date and location of the qualified donation; and (iii) a reasonably detailed description of the qualified donation. A letter or other written communication from the eligible food pantry acknowledging receipt of the contribution and containing the information in subparagraphs (i), (ii), and (iii) of this paragraph will serve as a receipt.

(g) Application of credit. The credit allowed under this subdivision for any taxable year will not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* NB There are 2 sb 52's

* 53. Employer-provided child care credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-four of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less

than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(c) Credit recapture. For provisions requiring recapture of credit, see section forty-four of this chapter.

* NB There are 2 sb 53's

* 53. Recovery tax credit. (a) Allowance of credit. A taxpayer that is a certified employer pursuant to section 32.38 of the mental hygiene law that has received a certificate of tax credit from the commissioner of the office of alcoholism and substance abuse services shall be allowed a credit against the tax imposed by this article equal to the amount shown on such certificate of tax credit. A taxpayer that is a partner in a partnership or member of a limited liability company that has been certified by the commissioner of the office of alcoholism and substance abuse services as a qualified employer pursuant to section 32.38 of the mental hygiene law shall be allowed its pro rata share of the credit earned by the partnership or limited liability company.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to that amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, no interest will be paid thereon.

(c) Tax return requirement. The taxpayer shall be required to attach to its tax return, in the form prescribed by the commissioner, proof of

receipt of its certificate of tax credit issued by the commissioner of the office of alcoholism and substance abuse services pursuant to section 32.38 of the mental hygiene law.

* NB There are 2 sb 53's

* 54. Television writers' and directors' fees and salaries credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four-b of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, further, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB Effective on the first of January next succeeding the date the department of economic development provides notice to the legislative bill drafting commission of a determination pursuant to § 6 sb 2 (b) of chapter 683 of 2019

55. Empire state digital gaming media production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five of this chapter shall be allowed a credit to be computed as provided in such section forty-five against the tax imposed by this article. Under no circumstances may a single taxpayer receive more than one million five hundred thousand dollars in tax credits per year.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount, the excess shall be treated as an

overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided, however, no interest shall be paid thereon.

56. Restaurant return-to-work tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-six of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

56-a. Additional restaurant return-to-work tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-six-a of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* 57. New York city musical and theatrical production tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-four-c of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB Repealed January 1, 2028

* 58. Farm employer overtime credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-two-a of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB There are 3 sb 58's

* 58. COVID-19 capital costs tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-seven of this chapter, against the taxes imposed by this

article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* NB There are 3 sb 58's

* 58. Grade no. 6 heating oil conversion tax credit. (a) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section forty-seven of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year will not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* NB There are 3 sb 58's

59. Child care creation and expansion tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-eight of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision

for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* 60. Newspaper and broadcast media jobs tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-nine of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* NB There are 2 sb 60's

* 60.*2 Commercial security tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-nine of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for the taxable year reduces the

tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* NB There are 2 sb 60's

61. Semiconductor research and development tax credit. (a) Allowance of credit. A taxpayer that has been approved by the commissioner of economic development to participate in the semiconductor research and development program and has been issued a certificate of tax credit pursuant to section three hundred fifty-nine-e of the economic development law shall be allowed to claim a credit against the tax imposed by this article. The credit shall equal up to fifteen percent of the cost or other basis for federal income tax purposes of the qualified investment and shall be allowable in each taxable year for which the commissioner of economic development has issued a certificate of tax credit, for up to ten consecutive taxable years. In no event shall a taxpayer be allowed a credit greater than the amount of credit listed on the certificate of tax credit issued by the commissioner of economic development. No cost or expense paid or incurred by the taxpayer that is the basis for this credit shall be the basis for any other tax credit provided by this chapter.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

(c) Reporting. The taxpayer shall attach to its tax return its certificate of tax credit issued by the commissioner of economic development pursuant to section three hundred fifty-nine-e of the economic development law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the certificate of tax credit, or in the case of a taxpayer who is a partner in a partnership, a member of a limited liability company, or shareholder in an S corporation, its pro rata share of the amount of credit listed on the certificate of tax credit.

(d) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of economic development under article seventeen-A of the economic development law is revoked by such department because the taxpayer does not meet the eligibility requirement set forth in subdivision six of section three hundred fifty-nine-c of the economic development law, the amount of credit described in this subdivision and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

62. Semiconductor manufacturing workforce training program tax credit.

(a) Allowance of tax credit. A taxpayer that has been approved by the commissioner of economic development to participate in the semiconductor manufacturing workforce training program and has been issued a certificate of tax credit pursuant to section five hundred three of the economic development law shall be allowed to claim a credit against the tax imposed by this article. The credit shall equal seventy-five percent of wages, salaries or other compensation, training costs, and wrap around services, up to a credit of twenty-five thousand dollars per employee receiving eligible training, up to one million dollars per eligible non-semiconductor manufacturing business and up to five million dollars per eligible semiconductor manufacturing business pursuant to subdivision three of section five hundred three of the economic development law. In no event shall a taxpayer be allowed a credit greater than the amount of credit listed on the certificate of tax credit issued by the commissioner of economic development. The credit shall be allowed in the taxable year in which the eligible training is completed. No cost or other expense paid or incurred by the taxpayer

that is the basis for this credit shall be the basis for any other tax credit provided by this chapter.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

(c) Reporting. The taxpayer shall attach to its tax return its certificate of tax credit issued by the commissioner of economic development pursuant to section five hundred three of the economic development law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the certificate of tax credit, or in the case of a taxpayer who is a partner in a partnership, a member of a limited liability company, or shareholder in an S corporation, its pro rata share of the amount of credit listed in the certificate of tax credit.

(d) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of the economic development under article twenty-eight of the economic development law is revoked by such department because the taxpayer does not meet the eligibility requirement set forth in subdivision three of section five hundred three of the economic development law, the amount of credit described in this subdivision and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

§ 210-C. Combined reports. 1. Tax. (a) The tax on a combined report shall be the highest of (i) the combined business income base multiplied by the tax rate specified in paragraph (a) of subdivision one of section

two hundred ten of this article; (ii) the combined capital base multiplied by the tax rate specified in paragraph (b) of subdivision one of section two hundred ten of this article, but not exceeding the limitation provided for in that paragraph (b); or (iii) the fixed dollar minimum that is attributable to the designated agent of the combined group. In addition, the tax on a combined report shall include the fixed dollar minimum tax specified in paragraph (d) of subdivision one of section two hundred ten of this article for each member of the combined group, other than the designated agent, that is a taxpayer.

(b) The combined business income base is the amount of the combined business income of the combined group that is apportioned to the state, reduced by any prior net operating loss conversion subtraction and any net operating loss deduction for the combined group. The combined capital base is the amount of the combined capital of the combined group that is apportioned to the state.

2. Combined reports required. (a) Except as provided in paragraph (c) of this subdivision, any taxpayer (i) which owns or controls either directly or indirectly more than fifty percent of the voting power of the capital stock of one or more other corporations, or (ii) more than fifty percent of the voting power of the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations, or (iii) more than fifty percent of the voting power of the capital stock of which and the capital stock of one or more other corporations, is owned or controlled, directly or indirectly, by the same interests, and (iv) that is engaged in a unitary business with those corporations (hereinafter referred to as "related corporations"), shall make a combined report with those other corporations.

(b) A corporation required to make a combined report within the meaning of this section shall also include (i) a captive REIT and a captive RIC if the captive REIT or captive RIC is not required to be included in a combined report under article thirty-three of this chapter; (ii) a combinable captive insurance company; and (iii) an alien corporation that satisfies the conditions in paragraph (a) of this subdivision if (I) under any provision of the internal revenue code, that corporation is treated as a "domestic corporation" as defined in section seven thousand seven hundred one of the internal revenue code,

or (II) it has effectively connected income for the taxable year pursuant to clause (iv) of the opening paragraph of subdivision nine of section two hundred eight of this article.

(c) A corporation required or permitted to make a combined report under this section does not include (i) a corporation that is taxable under a franchise tax imposed by article nine or article thirty-three of this chapter or would be taxable under a franchise tax imposed by article nine or thirty-three of this chapter if subject to tax; (ii) a REIT that is not a captive REIT, and a RIC that is not a captive RIC; (iii) a New York S corporation; or (iv) an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause (iv) of the opening paragraph of subdivision nine of section two hundred eight of this article. If a corporation is subject to tax under this article solely as a result of its ownership of a limited partner interest in a limited partnership that is doing business, employing capital, owning or leasing property, maintaining an office in this state, or deriving receipts from activity in this state, and none of the corporation's related corporations are subject to tax under this article, such corporation shall not be required or permitted to file a combined report under this section with such related corporations.

(d) A combined report shall be filed by the designated agent of the combined group as determined under subdivision seven of this section.

3. Commonly owned group election. (a) Subject to the provisions of paragraph (c) of subdivision two of this section, a taxpayer may elect to treat as its combined group all corporations that meet the ownership requirements described in paragraph (a) of subdivision two of this section (such corporations collectively referred to in this subdivision as the "commonly owned group"). If that election is made, the commonly owned group shall calculate the combined business income, combined capital, and fixed dollar minimum bases of all members of the group in accordance with subdivision four of this section, whether or not that business income or business capital is from a single unitary business.

(b) The election under this subdivision shall be made on an original,

timely filed return of the combined group, determined with regard to extensions of time for filing. Any corporation entering a commonly owned group subsequent to the year of election shall be included in the combined group and is considered to have waived any objection to its inclusion in the combined group.

(c) The election shall be irrevocable, and binding for and applicable to the taxable year for which it is made and for the next six taxable years. The election will automatically be renewed for another seven taxable years after it has been in effect for seven taxable years unless it is affirmatively revoked. The revocation shall be made on an original, timely filed return for the first taxable year after the completion of a seven year period for which an election under this subdivision was in place. In the case of a revocation, a new election under this subdivision shall not be permitted in any of the immediately following three taxable years. In determining the seven and three year periods described in this paragraph, short taxable years shall not be considered or counted.

4. Computation of tax bases on a combined report. (a) In computing the tax bases for a combined report, the combined group shall generally be treated as a single corporation, except as otherwise provided, and subject to any regulations or guidance issued by the commissioner or the department.

(b)(i) In computing combined business income, all intercorporate dividends shall be eliminated, and all other intercorporate transactions shall be deferred in a manner similar to the United States Treasury regulations relating to intercompany transactions under section fifteen hundred two of the internal revenue code.

(ii) In computing combined capital, all intercorporate stockholdings, intercorporate bills, intercorporate notes receivable and payable, intercorporate accounts receivable and payable, and other intercorporate indebtedness, shall be eliminated.

(c) Qualification for credits, including any limitations thereon, shall be determined separately for each of the members of the combined group, and shall not be determined on a combined group basis, except as otherwise provided. However, the credits shall be applied against the combined tax of the group. To the extent that a provision of section two

hundred ten-B of this article limits a credit to the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article, such fixed dollar minimum amount shall be the fixed dollar minimum amount that is attributable to the designated agent of the combined group.

(d) (i) A net operating loss deduction is allowed in computing the combined business income base. Such deduction may reduce the tax on the combined business income base to the higher of the tax on the combined capital base or the fixed dollar minimum amount that is attributable to the designated agent of the combined group. A combined net operating loss deduction is equal to the amount of combined net operating loss or losses from one or more taxable years that are carried forward or carried back to a particular taxable year. A combined net operating loss is the combined business loss incurred in a particular taxable year multiplied by the combined apportionment factor for that year determined as provided in subdivision five of this section.

(ii) The combined net operating loss deduction and combined net operating loss are also subject to the provisions contained in clauses one through seven of subparagraph (ix) of paragraph (a) of subdivision one of section two hundred ten of this article.

(iii) In the case of a corporation that files a combined report, either in the year the net operating loss is incurred or in the year in which a deduction is claimed on account of the loss, the combined net operating loss deduction is determined as if the combined group is a single corporation and, to the extent possible and not otherwise inconsistent with this subdivision, is subject to the same limitations that would apply for federal income tax purposes under the internal revenue code and the code of federal regulations as if such corporation had filed for such taxable year a consolidated federal income tax return with the same corporations included in the combined report. If a corporation files a combined report, regardless of whether it filed a separate return or consolidated return for federal income tax purposes, the net operating loss and net operating loss deduction for the combined group must be computed as if the corporation had filed a consolidated return for the same corporations for federal income tax purposes.

(iv) In general, any net operating loss carryover from a year in which a combined report was filed shall be based on the combined net operating

loss of the group of corporations filing such report. The portion of the combined loss attributable to any member of the group that files a separate report for a succeeding taxable year will be an amount bearing the same relation to the combined loss as the net operating loss of such corporation bears to the total net operating loss of all members of the group having such losses to the extent that they are taken into account in computing the combined net operating loss.

(d-1) A prior net operating loss conversion subtraction is allowed in computing the combined business income base, as provided in subparagraph (viii) of paragraph (a) of subdivision one of section two hundred ten of this article. Such subtraction may reduce the tax on the combined business income base to the higher of the tax on the combined capital base or the fixed dollar minimum amount that is attributable to the designated agent of the combined group.

(e) (i) Any election made pursuant to paragraph (b) of subdivision six, paragraphs (b) and (c) of subdivision six-a of section two hundred eight, and item (IV) of subclause two of clause (B) of subparagraph (viii) and clause seven of subparagraph (ix) of paragraph (a) of subdivision one of section two hundred ten of this article shall apply to all members of the combined group.

(ii) The determination of whether or not the limitation on investment income provided in subparagraph (iii) of paragraph (a) of subdivision six of section two hundred eight of this article applies to the combined group shall be based on the investment income of the combined group, determined without regard to interest expenses attributable to investment capital or investment income, and the entire net income of the combined group.

(f)(i) In the case of a captive REIT or captive RIC required under this section to be included in a combined report, entire net income shall be computed as required under subdivision five (in the case of a captive REIT) or subdivision seven (in the case of a captive RIC) of section two hundred nine of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall not be allowed. For purposes of this subparagraph, the term "affiliated group" means

"affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

(ii) In the case of a combinable captive insurance company required under this section to be included in a combined report, entire net income shall be computed as required by subdivision nine of section two hundred eight of this article.

(g) If more than one member of a combined group is eligible for any of the modifications described in paragraphs (r), (s) and (t) of subdivision nine of section two hundred eight of this article, all such members must utilize the same modification.

5. Apportionment on a combined report. (a) In determining the apportionment factor for a combined report, the receipts, net income, net gains and other items of all members of the combined group, whether or not they are a taxpayer, are included and intercorporate receipts, income and gains are eliminated. Receipts, net income, net gains and other items are sourced, and the amounts allowed in the apportionment factor are determined, as provided in section two hundred ten-A of this article.

(b) An election made to apportion income and gains from qualifying financial instruments pursuant to subparagraph one of paragraph (a) of subdivision five of section two hundred ten-A of this article shall apply to all members of the combined group.

6. Liability of combined group members. Every member of the combined group that is subject to tax under this article shall be jointly and severally liable for the tax due pursuant to a combined report.

7. Designated agent. Each combined group shall have one designated agent for the combined group, which shall be a taxpayer. Only the designated agent may act on behalf of the members of the combined group for matters relating to the combined report.

§ 211. Reports. 1. Every taxpayer shall annually on or before March fifteenth, for taxable years beginning before January first, two

thousand sixteen, and annually on or before April fifteenth, for taxable years beginning on or after January first, two thousand sixteen, transmit to the commissioner a report in a form prescribed by the commissioner (except that a corporation which reports on the basis of a fiscal year shall transmit its report within two and one-half months after the close of its fiscal year, for taxable years beginning before January first, two thousand sixteen, and on or before the fifteenth day of the fourth month after the close of its fiscal year, for taxable years beginning on or after January first, two thousand sixteen, and except, also, that a corporation which is a DISC shall transmit its report on or before the fifteenth day of the ninth month following the close of its calendar or fiscal year), setting forth such information as the commissioner may prescribe and every taxpayer which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the commissioner a report on the date of such cessation or at such other time as the commissioner may require covering each year or period for which no report was theretofore filed. In the case of a termination year of an S corporation, the S short year and the C short year shall be treated as separate short taxable years, provided, however, the due date of the report for the S short year shall be the same as the due date of the report for the C short year. Every taxpayer shall also transmit such other reports and such facts and information as the commissioner may require in the administration of this article. The commissioner may grant a reasonable extension of time for filing reports whenever good cause exists.

An automatic extension of six months for the filing of its annual report shall be allowed any taxpayer if, within the time prescribed by the preceding paragraph, such taxpayer files with the commissioner an application for extension in such form as the commissioner may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax.

2. Every report shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true.

In the case of an association, within the meaning of paragraph three of section (a) of section seventy-seven hundred one of the internal revenue code, a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments such certification shall be made by any person duly authorized so to act on behalf of such association, publicly traded partnership or business. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. Blank forms of reports shall be furnished by the commissioner of taxation and finance, on application, but failure to secure such a blank shall not release any corporation from the obligation of making any report required by this article.

2-a. The commissioner may prescribe regulations and instructions requiring returns of information to be made and filed in conjunction with the reports required to be filed pursuant to this article, relating to payments made to shareholders owning, directly or indirectly, individually or in the aggregate, more than fifty percent of the issued capital stock of the taxpayer, where such payments are treated as payments of interest in the computation of entire net income reported on such reports.

3. If the amount of taxable income for any year of any taxpayer (including any taxpayer which has elected to be taxed under subchapter s of chapter one of the internal revenue code), as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in taxable income, such taxpayer shall report such changed or corrected taxable income, or the results of such renegotiation, within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined report under this article for such year) after the final determination of such change or correction or renegotiation, or as required by the

commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Provided however, if the taxpayer is a direct or indirect partner of a partnership required to report adjustments in accordance with section six hundred fifty-nine-a of this chapter, such taxpayer shall also report such adjustments in accordance with section six hundred fifty-nine-a of this chapter. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code, as amended, shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined report under this article for such year) thereafter an amended report with the commissioner.

4. For provisions relating to combined reports, see section two hundred ten-C of this article.

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

such terms as to create an improper loss or net income, the commissioner may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction. Where any taxpayer owns, directly or indirectly, more than fifty percent of the capital stock of another corporation subject to tax under section fifteen hundred two-a of this chapter and fifty percent or less of whose gross receipts for the taxable year consist of premiums, the commissioner may include in the entire net income of the taxpayer, as a deemed distribution, the amount of the net income of the other corporation that is in excess of its net premium income.

6. An action may be brought at any time by the attorney-general at the instance of the tax commission, in the name of the state, to compel the filing of reports due under this article.

7. Reports shall be preserved for five years, and thereafter until the tax commission orders them to be destroyed.

8. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any tax commissioner, any officer or employee of the department, or any person who, pursuant to this section, is permitted to inspect any report, or to whom any information contained in any report is furnished, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a report filed pursuant to this article, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report under this article. The officers charged with the custody of such reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state or the commissioner in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the reports or facts shown thereby are directly

involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding, and no more. The commissioner may, nevertheless, publish a copy or a summary of any determination or decision rendered after the formal hearing provided for in section one thousand eighty-nine of this chapter. Nothing herein shall be construed to prohibit the delivery to a corporation or its duly authorized representative of a copy of any report filed by it, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof; or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by section two hundred thirteen of this chapter together with any relevant information which in the opinion of the commissioner may assist in the collection of such delinquent taxes; or the inspection by the attorney general or other legal representatives of the state of the report of any corporation which shall bring action to set aside or review the tax based thereon, or against which an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or the attorney general or has been instituted; or the inspection of the reports of any corporation by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by such corporation under this article.

(b) (i) Any officer or employee of the state who willfully violates the provisions of paragraph (a) of this subdivision shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

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

(c) Notwithstanding any provisions of this subdivision, the tax commission may permit the secretary of the treasury of the United States or his delegates, or the proper officer of any other state charged with tax administration, or the authorized representative of either such officer, to inspect the reports filed under this article, or may furnish to such officer or his authorized representative an abstract of any such

report or supply information concerning an item contained in any such report, or disclosed by an investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the secretary of the treasury of the United States or his delegates such reports filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury or his delegates provided the laws of the United States grant substantially similar powers to the secretary of the treasury or his delegates. Where the commissioner of taxation and finance has so authorized use of reports or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such reports or other tax information; and provided further that such commission may furnish any municipality with such information contained in the reports filed under this article as it may consider proper for use in any certiorari or condemnation proceeding.

9. Notwithstanding the provisions of subdivision eight of this section, the tax commission may permit the officer charged with the administration of an income tax imposed by any city of the state of New York, or the authorized representative of such officer, to inspect the reports filed under this article, or may furnish to such officer or his authorized representative an abstract of any such report or supply information concerning an item contained in any such report, or disclosed by any investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this

state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or his delegates and the legal representative of such city such reports filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his delegates or by such legal representative of such city, provided the local law of such city grants substantially similar powers to the city officer charged with the administration of the city income tax or his delegates. Where the commissioner of taxation and finance has so authorized use of reports or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such reports or other tax information.

10. Notwithstanding the provisions of subdivision eight of this section, the tax commission, in its discretion, may require or permit any or all persons liable for any tax imposed by this article, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this article to banks, banking houses or trust companies designated by the tax commission and to file declarations of estimated tax, applications for automatic extensions of time to file reports, and reports with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section two hundred eighteen.

11. Notwithstanding the provisions of subdivision eight of this section, the commissioner may disclose to the head of any state agency, pursuant to section one hundred seventy-one-f of this chapter, the name and taxpayer identification number of any taxpayer whose overpayment is certified to the comptroller to be credited against a past-due legally enforceable debt owed to such agency and the amount of the overpayment

and interest thereon certified to the comptroller to be credited against a past-due legally enforceable debt, and the commissioner may disclose to the commissioner of finance of the city of New York, pursuant to section one hundred seventy-one-l of this chapter, the name and taxpayer identification number of any taxpayer whose overpayment is certified to the comptroller to be credited against a city of New York tax warrant judgment debt and the amount of the overpayment and interest thereon certified to the comptroller to be credited against a city of New York tax warrant judgment debt.

12. (a) Notwithstanding the provisions of subdivision eight of this section, the commissioner and the comptroller shall enter into an agreement pursuant to which the commissioner shall, upon request, provide the comptroller with a report, not more frequently than annually, with respect to corporations or other entities which have filed a business corporation franchise tax report under this article for any taxable year within ten calendar years prior to the report to the comptroller made pursuant to this subdivision, providing the following information, to the extent that such information is readily available from the department's system for identifying taxpayer indicative data:

- (1) business name and legal name, if different;
- (2) business address and mailing address;
- (3) federal employer identification number;
- (4) date entered into business.

(b) Each report to the comptroller made pursuant to this subdivision shall list each corporation or other entity with respect to which such report is made according to the total assets reported for the end of the year on its most recent available business corporation franchise tax report, in descending order. Such reports to the comptroller shall not disclose the actual amount of total assets reported on such business corporation franchise tax reports.

(c) The information provided to the comptroller pursuant to this subdivision shall be used only for administration and enforcement of the abandoned property law. The comptroller may redisclose the information provided under this subdivision only to the extent necessary for enforcement or administration of the abandoned property law.

(d) The reports to the comptroller required under this subdivision

shall be submitted by electronic means or in some other format which is mutually acceptable to the comptroller and the commissioner. The written agreement with the comptroller shall set forth the procedures for providing the information the commissioner is allowed to disclose pursuant to this subdivision.

(e) Notwithstanding article six of the public officers law or any other provision of law, the reports to be furnished to the comptroller pursuant to this subdivision shall not be open to the public for inspection.

14. Notwithstanding the provisions of subdivision eight of this section, the commissioner may disclose to a taxpayer or a taxpayer's related member, as defined in paragraph (o) of subdivision nine of section two hundred eight of this article, information relating to any royalty payments paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner under this chapter.

15. Notwithstanding the provisions of subdivision eight of this section, the commissioner shall provide the statements and other required information requested on tax reports under section four hundred eight of the business corporation law to the secretary of state for filing. Such provision may also include a copy or image of that portion of the report solely pertinent to such information to the extent feasible. The commissioner any also provide information on noncompliance.

16. (a) Notwithstanding the provisions of subdivision eight of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year reports specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New

York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any report, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such report, and any social security numbers, account numbers and residential address information.

(b) No reports shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such reports have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal reports or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested reports are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection

and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 213. Payment and lien of tax. 1. To the extent the tax imposed by section two hundred nine of this chapter shall not have been previously paid pursuant to section two hundred thirteen-b of this chapter,

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

b. such tax, or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or to be subject to the tax imposed by this article shall be payable to the commissioner at the time the report is required to be filed, provided such tax of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other taxes of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time.

2. If any taxpayer, within the time prescribed by section two hundred eleven of this article, shall have applied for an automatic extension of time to file its annual report and shall have paid to the commissioner of taxation and finance on or before the date such application is filed an amount properly estimated as provided by said section, the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this chapter, or, if no rate is set, at the rate of six per centum per annum upon the amount by which the tax, or the portion thereof payable on or before the date the report was required to be filed, exceeds the amount so paid. For purposes of the preceding sentence:

a. an amount so paid shall be deemed properly estimated if it is either (i) not less than ninety per centum of the tax as finally

determined, or (ii) not less than the tax shown on the taxpayer's report for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

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

3. The commissioner may grant a reasonable extension of time for payment of any tax imposed by this article under such conditions as he or she deems just and proper.

§ 213-a. Declaration of estimated tax.-- (a) Requirement of declaration.--Every taxpayer subject to the tax imposed by section two hundred nine of this article shall make a declaration of its estimated tax for the current privilege period, containing such information as the commissioner of taxation and finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars for taxable years beginning before January first, two thousand twenty-six, or five thousand dollars for taxable years beginning on or after January first, two thousand twenty-six. If a taxpayer is subject to the tax surcharge imposed under section two hundred nine-B of this article and such taxpayer's estimated tax under section two hundred nine of this article can reasonably be expected to exceed one thousand dollars for taxable years beginning before January first, two thousand twenty-six, or five thousand dollars for taxable years beginning on or after January first, two thousand twenty-six, such taxpayer shall also make a declaration of its estimated tax surcharge for the current privilege period.

(b) Definition of estimated tax and estimated tax surcharge.--The terms "estimated tax" and "estimated tax surcharge" mean the amounts which a taxpayer estimates to be the tax or tax surcharge imposed by section two hundred nine or two hundred nine-B, respectively, of this chapter for the current privilege period, less the amount which it estimates to be the sum of any credits allowable against the tax or tax surcharge, respectively.

(c) Time for filing declaration.--A declaration of estimated tax and a

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

(1) after May thirty-first and before September first of such current privilege period, the declaration shall be filed on or before September fifteenth, or

(2) after August thirty-first and before December first of such current privilege period, the declaration shall be filed on or before December fifteenth.

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

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

(i) such report shall be considered as its declaration if no declaration was required to be filed during the calendar or fiscal year for which the tax or tax surcharge was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to subdivision (c),

(ii) such report shall be considered as the amendment permitted by subdivision (d) to be filed on or before December fifteenth if the tax or tax surcharge shown on the report is greater than the estimated tax or estimated tax surcharge, as the case may be, shown on a declaration previously made.

(f) Fiscal year.--This section shall apply to privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(g) Short privilege period.--If the privilege period for which a tax or tax surcharge is imposed by section two hundred nine or two hundred nine-B, respectively, of this chapter is less than twelve months, every taxpayer required to make a declaration of estimated tax or a declaration of estimated tax surcharge for such privilege period shall make such a declaration in accordance with regulations of the

commissioner of taxation and finance.

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

§ 213-b. Payments on account of estimated tax.-- (a) First installments for certain taxpayers.--In privilege periods of twelve months ending at any time during the calendar year nineteen hundred seventy and thereafter, every taxpayer subject to the tax imposed by section two hundred nine of this article must pay with the report required to be filed for the preceding privilege period, or with an application for extension of the time for filing the report, for taxable years beginning before January first, two thousand sixteen, and must pay on or before the fifteenth day of the third month of such privilege periods, for taxable years beginning on or after January first, two thousand sixteen, an amount equal to (i) twenty-five percent of the second preceding year's tax if the second preceding year's tax exceeded one thousand dollars for taxable years beginning before January first, two thousand twenty-six, or five thousand dollars for taxable years beginning on or after January first, two thousand twenty-six, but was equal to or less than one hundred thousand dollars, or (ii) forty percent of the second preceding year's tax if the second preceding year's tax exceeded one hundred thousand dollars. If the second preceding year's tax under section two hundred nine of this article exceeded one thousand dollars for taxable years beginning before January first, two thousand twenty-six, or five thousand dollars for taxable years beginning on or after January first, two thousand twenty-six, and the taxpayer is subject to the tax surcharge imposed by section two hundred nine-B of this article, the taxpayer must also pay with the tax surcharge report required to be filed for the second preceding privilege period, or with an application for extension of the time for filing the report, for taxable years beginning before January first, two thousand sixteen, and must pay on or before the fifteenth day of the third month of such privilege periods, for taxable years beginning on or after January first, two thousand sixteen, an amount equal to (i) twenty-five

percent of the tax surcharge imposed for the second preceding year if the second preceding year's tax was equal to or less than one hundred thousand dollars, or (ii) forty percent of the tax surcharge imposed for the second preceding year if the second preceding year's tax exceeded one hundred thousand dollars. Provided, however, that every taxpayer that is a New York S corporation must pay with the report required to be filed for the preceding privilege period, or with an application for extension of the time for filing the report, an amount equal to (i) twenty-five percent of the preceding year's tax if the preceding year's tax exceeded one thousand dollars for taxable years beginning before January first, two thousand twenty-six, or five thousand dollars for taxable years beginning on or after January first, two thousand twenty-six, but was equal to or less than one hundred thousand dollars, or (ii) forty percent of the preceding year's tax if the preceding year's tax exceeded one hundred thousand dollars.

(b) Other installments.--In privilege periods of twelve months ending at any time during the calendar year nineteen hundred seventy and thereafter, the estimated tax or estimated tax surcharge, with respect to which a declaration for such privilege period is required shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

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

(2) If the declaration is filed after June fifteenth and not after September fifteenth of such privilege period, and is not required to be filed on or before June fifteenth of such period, the estimated tax or estimated tax surcharge shown on such declaration, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision (a), shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

(3) If the declaration is filed after September fifteenth of such

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

(4) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2) and (3) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax or estimated tax surcharge payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

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

(d) Application of installments based on the second preceding year's tax.--(1) Any amount paid pursuant to subdivision (a) shall be applied after payment as a first installment against the estimated tax or estimated tax surcharge, respectively, of the taxpayer for the current privilege period shown on the declaration required to be filed pursuant to section two hundred thirteen-a of this chapter or, if no declaration of estimated tax or a declaration of estimated tax surcharge is required to be filed by the taxpayer pursuant to such section, any such amount shall be considered a payment on account of the tax or tax surcharge shown on the report required to be filed by the taxpayer for such privilege period.

(2) Any amount paid pursuant to paragraph four of subsection (c) of section six hundred fifty-eight of this chapter on behalf of a taxpayer subject to tax under this article shall be applied against the estimated tax of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section two hundred thirteen-a of this

article, or if no declaration is filed pursuant to such section, any such amount shall be considered a payment on account of the tax on the return required to be filed by the taxpayer for such taxable year.

(e) Interest on certain installments based on the second preceding year's tax.--Notwithstanding the provisions of section one thousand eighty-eight of this chapter or of section sixteen of the state finance law, if an amount paid pursuant to subdivision (a) exceeds the tax or tax surcharge, respectively, shown on the report required to be filed by the taxpayer for the privilege period during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax or tax surcharge. In the case of amounts so paid pursuant to subdivision (a), such interest shall be allowed and paid at the overpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six per centum per annum from the date of payment of the amount so paid pursuant to such subdivision to the fifteenth day of the fourth month following the close of the taxable year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar or if such interest becomes payable solely because of a carryback of a net operating loss in a subsequent privilege period.

(f) The preceding year's tax and the second preceding year's tax defined.-- As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by section two hundred nine of this article for the preceding calendar or fiscal year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the report required to be filed for such preceding calendar or fiscal year, the amount properly estimated pursuant to section two hundred thirteen of this article as the tax imposed upon the taxpayer for such calendar or fiscal year. As used in this section, "the second preceding year's tax" means the tax imposed upon the taxpayer by section two hundred nine of this article for the second preceding calendar or fiscal year.

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

(h) Fiscal year.--The provisions of this section shall apply to

privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in such provisions.

(i) Extension of time.--The commissioner of taxation and finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax or estimated tax surcharge required pursuant to this section, on such terms and conditions as he may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided however that interest at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six per centum per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

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

§ 216. Collection of taxes. Every foreign corporation (other than a moneyed corporation) subject to the provisions of this article, except a corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or a vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this article may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon him. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to

mail copies of process served upon him to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon him to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this article, may be made by either (1) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (2) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

§ 217. Penalties. 1. If any taxes, penalties or interest due under

this article are not paid, or any report required is not filed, and the tax commission is satisfied that the failure to make such payment or file such report is intentional, it may so report to the attorney-general, who shall immediately bring an action in the name of the people of the state, for the forfeiture of the charter or franchise of any corporation failing to make such payment, or file such report, and if it be found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of such charter and for its dissolution if a domestic corporation and if a foreign corporation for the annulment of its franchise to do business in this state.

2. Whenever any corporation has failed to file an annual report for a period of two consecutive years or has been delinquent in the payment of taxes for any two years duly assessed pursuant to this article or article nine-a of the tax law heretofore in effect, all the authority and powers conferred on the tax commission and the secretary of state by section two hundred three-a of this chapter and all of the provisions of such section shall have full force and effect in respect of and shall be applicable to such corporation.

3. Whenever any foreign corporation has failed to file an annual report or has been delinquent in the payment of taxes duly assessed pursuant to this article for the periods of time specified in subdivision two of this section, all the authority and powers conferred on the tax commission and the secretary of state by section two hundred three-b of this chapter and all of the provisions of such section shall have full force and effect in respect of and shall be applicable to such corporation.

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

§ 219. Limitation of time. The provisions of the civil practice law

and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

§ 219-a. Practice and procedure for taxable years ending on or after December thirty-first, nineteen hundred sixty-four.--For taxable years or periods ending on or after December thirty-first, nineteen hundred sixty-four--

(1) the provisions of article twenty-seven shall apply with respect to the administration of and procedure with respect to the tax imposed under this article;

(2) any provisions of this article which are inconsistent with or contrary to the provisions of article twenty-seven shall not apply.

ARTICLE 11

TAX ON MORTGAGES

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§ 250. Definitions. 1. The term "real property" as used in this article includes the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, crantage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and underground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways or

public places, any mains, pipes, tanks, conduits or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity or telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state; and all the forms of housing which are adaptable to motivation by a power connected thereto or which may be propelled by a power within themselves and which are or can be used as a house or living abode or habitation of one or more persons, or for business, commercial or office purposes, either temporarily or permanently, and commonly called and hereafter referred to as "trailers"; except (1) transient trailers which have been located within the boundaries of a city, town or village for less than sixty days and (2) trailers which are for sale and which are not occupied. Said terms shall not include bulk milk tanks or coolers installed upon the farm to hold milk awaiting shipment to market. "Real property" also includes everything a conveyance or mortgage of which can be recorded as a conveyance or mortgage of real property under the laws of the state.

2. (a) The term "mortgage" as used in this article includes every mortgage or deed of trust which imposes a lien on or affects the title to real property, notwithstanding that such property may form a part of the security for the debt or debts secured thereby. An assignment of rents to accrue from tenancies, subtenancies, leases or subleases of real property, within any city in the state having a population of one million or more, given as security for an indebtedness, shall be deemed a mortgage of real property for purposes of this article. Executory contracts for the sale of real property under which the vendee has or is entitled to possession shall be deemed to be mortgages for the purposes of this article and shall be taxable at the amount unpaid on such contracts. A contract or agreement by which the indebtedness secured by any mortgage is increased or added to, shall be deemed a mortgage of real property for the purpose of this article, and shall be taxable as such upon the amount of such increase or addition. Notwithstanding anything in this section or section two hundred fifty-five of this article to the contrary, a contract or agreement whereby the proceeds of any indebtedness secured by a mortgage of real property in any city in

the state having a population of one million or more are used to reduce all or any part of a mortgagee's equity interest in a wraparound or similar mortgage of such real property shall be deemed a mortgage of real property for the purposes of this article and shall be taxable as such to the extent of the amount of such proceeds so used, without regard to whether the aggregate amount of indebtedness secured by mortgages of such real property is increased or added to.

(b) Where all or part of the indebtedness secured by a mortgage of real property within any city in the state having a population of one million or more has been paid and new funds are advanced or re-advanced which are to be secured by such mortgage, the contract or agreement by which such funds are advanced or re-advanced shall be deemed a mortgage of real property for purposes of this article, and shall be taxable as such upon the amount of such new funds, except as otherwise provided in section two hundred fifty-three-b of this article.

3. The term "tax district" as used in this article means a city or town.

§ 251. Procedure for review. Where the application of the provisions of this article is involved, the act of a recording officer in recording or refusing to record an instrument, his determination, if any, and the application of this article thereto, shall be subject to review in the first instance by the commissioner of taxation and finance. Such review may be requested, within the time provided for by section two hundred fifty-seven-a or two hundred sixty-three of this article, as the case may be, by a party to the instrument or person interested therein or in the property affected thereby or such review may be initiated by the commissioner of taxation and finance. After such review, the commissioner of taxation and finance shall notify (i) the party or person who has so requested such review or, in the case of such review initiated by the commissioner of taxation and finance, the party to the instrument or person interested therein or in the property affected thereby, and (ii) the city of New York, or the county treasurer, as the case may be, to whom the tax imposed by this article may be payable, of his determination. Such determination shall be fixed and irrevocable

unless within ninety days of the mailing of such notice, the party or person, who has so requested such review, or, in the case of such review initiated by the commissioner of taxation and finance, any party to the instrument or person interested therein or in the property affected thereby, or the city of New York, or the county treasurer, as the case may be, to whom the tax imposed by this article may be payable, petitions the division of tax appeals for a hearing unless the parties mentioned in clauses (i) and (ii) of this section waive their right to petition in such matter. The division of tax appeals shall give not less than three days written notice of the time and place of hearing, to be served either personally or by mail on all persons who filed such a petition, upon the commissioner of taxation and finance and upon the city of New York or upon the county treasurer, as the case may be, to whom such tax may be payable. The administrative law judge shall take such proofs as may be necessary to establish a complete record and thereupon issue his determination. After such hearing, the division of tax appeals shall give notice of the determination of the administrative law judge to such party or person who so filed such petition, to such city or such county treasurer and to the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal, as provided in article forty of this chapter, at the instance of any party to such hearing, and by the city of New York or the county treasurer, as the case may be, to whom such tax may be payable. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter except that the city of New York or the county treasurer, as the case may be, to whom such tax may be payable, may also apply for judicial review. The provisions of this section shall be construed as amplifying and extending the rights of review expressly provided in other sections of this article, and shall in no manner be deemed a restriction thereof.

§ 252. Exemptions. (1) No mortgage of real property situated within this state shall be exempt, and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt, from the taxes imposed by this article by reason of anything contained in any other statute, except as provided in

section three hundred thirty-nine-ee of the real property law, or by reason of any provision in any private act or charter which is subject to amendment or repeal by the legislature, or by reason of non-residence within this state or for any other cause, except that mortgages of real property situated within this state transferred, assigned or made to Home Owners' Loan Corporation, a corporation created under an act of congress, known as home owners' loan act of nineteen hundred and thirty-three, or to a agricultural credit association or federal home loan bank, shall be exempt, and said corporation or institution owning any debt or obligation secured by mortgage of real property situated within this state, shall be exempt from the taxes imposed by this article and except that mortgages of real property situated within this state executed, given or made prior to June first, nineteen hundred thirty-four by any public benefit corporation created under the laws of this state for the purpose of maintaining and operating a public park and public recreation center shall be exempt, and any person or corporation owning any debt or obligation of any such public benefit corporation secured by such a mortgage of its real property situated within this state, shall be exempt from the taxes imposed by this article, and except that mortgages of real property situated within this state which are executed, given or made subsequent to June seventh, nineteen hundred thirty-four and which are substituted for other mortgages as a part of and in compliance with a plan of reorganization pursuant to the provisions of section seventy-seven-b of the federal bankruptcy act, are and shall be exempt from taxes imposed by this article to an amount not exceeding the amount of such mortgage indebtedness outstanding at the time of the consummation of such reorganization, and any person or corporation owning any debt or obligation secured by such a mortgage of real property situated within this state is and shall be exempt from the taxes imposed by this article, and except that mortgages of real property situated within this state which are executed, given or made by a railroad redevelopment corporation during the first nine years of its existence as such are and shall be exempt from the taxes imposed by this article and any person or corporation owning any debt or obligation secured by such a mortgage of real property situated within this state is and shall be exempt from the taxes imposed by this article.

(2) Notwithstanding article eighteen-A of the general municipal law and titles eleven and fifteen of article eight of the public authorities law, no mortgage of real property situated within the state in counties located within the metropolitan commuter transportation district, the Niagara Frontier transportation district, the Rochester-Genesee transportation district, the capital district transportation district, and the central New York regional transportation district executed, given, made, or transferred or assigned by or to an agency created under article eighteen-A of the general municipal law, an authority created under title eleven or fifteen of article eight of the public authorities law, an agent or agent of such agent of such agency or authority, a project operator receiving financial assistance from such agency or authority, a project occupant of such agency or authority, or an owner of a project receiving financial assistance from such agency or authority shall be exempt from the additional tax imposed by paragraph (a) of subdivision two of section two hundred fifty-three of this article. For the purposes of this subdivision the term "financial assistance" shall have the same meaning as defined in section eight hundred fifty-four of the general municipal law.

§ 252-a. Other exemptions. 1. Mortgages of real property given to secure obligations incurred and given pursuant to the provisions of section six-a of the banking law shall be exempt from any tax or fee imposed by this article.

2. Reverse mortgages conforming to the provisions of section two hundred eighty or two hundred eighty-a of the real property law securing obligations of mortgagors or exempted therefrom pursuant to subdivision four of section two hundred eighty or subdivision four of section two hundred eighty-a of the real property law shall be exempt from any tax or fee imposed by this article. In each case where an exemption is claimed under this subdivision, the lender shall provide documentation in a format approved by the commissioner of taxation and finance to enable recording officers to affirmatively determine when a mortgage being presented for recording is a reverse mortgage conforming to such provisions of the real property law and entitled to an exemption under

this subdivision. Where such documentation is not furnished, the maximum principal debt or obligation which shall be the measure of the tax imposed by and pursuant to the authority of this article in the case of a reverse mortgage shall be the proceeds of the loan which the authorized lender is obligated to lend the borrower at the execution of such mortgage or at any time thereafter but determined without regard to any contingency relating to the addition of any unpaid interest to principal or relating to any percentage of the future appreciation of the property securing the loan as consideration or additional consideration for the making of the loan. Provided, however, if subsequent to the recording of such mortgage, the proceeds which the authorized lender is obligated to lend the borrower are increased at any time, such new or further indebtedness or obligation shall be the measure of the tax at such time unless at that time an exemption is applicable under the first sentence of this subdivision or otherwise.

§ 253. Recording tax. 1. A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of July, nineteen hundred and six, is hereby imposed on each such mortgage, and shall be collected and paid as provided in this article. If the principal debt or obligation which is or by any contingency may be secured by such mortgage recorded on or after the first day of July, nineteen hundred and seven, is less than one hundred dollars, a tax of fifty cents is hereby imposed on such mortgage, and shall be collected and paid as provided in this article.

1-a. (a) In addition to the tax imposed by subdivision one of this section, there shall be imposed on each mortgage of real property situated within the state, except mortgages wherein the mortgagee is a natural person or persons, or is a credit union as defined in section two of the banking law, and in either case the mortgaged premises consist of real property improved by a structure containing six residential dwelling units or less, each with separate cooking

facilities, a special additional tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at anytime thereafter by such mortgage. The tax, if any, imposed by this subdivision shall in cases of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, be paid by the mortgagee, and such tax shall not be paid or payable, directly or indirectly, by the mortgagor except as otherwise provided in sections two hundred fifty-eight and two hundred fifty-nine of this article and except such tax shall be paid in such cases by the mortgagor where the mortgagee is an exempt organization described in paragraph (b) of this subdivision. In all other cases, such tax shall be paid by the mortgagor except that the tax shall be paid by the mortgagee where the mortgagor is an exempt organization described in paragraph (b) of this subdivision. All of the provisions of this article shall apply with respect to the special additional tax imposed by this subdivision to the same extent as if it were imposed by said subdivision one of this section, except as otherwise expressly provided in this article.

(b) An organization organized other than for profit which is operated on a nonprofit basis no part of the net earnings of which inures to the benefit of any officer, director or member and which is exempt from federal income taxation pursuant to subsection (a) of section five hundred one of the internal revenue code shall be exempt from the special additional tax imposed by this subdivision.

2. (a) In addition to the taxes imposed by subdivisions one and one-a of this section, there shall be imposed on each mortgage of real property situated within the state recorded on or after the first day of July, nineteen hundred sixty-nine, an additional tax of twenty-five cents for counties outside of the metropolitan commuter transportation district, as defined pursuant to section twelve hundred sixty-two of the public authorities law, and thirty cents for counties within such metropolitan commuter transportation district for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date

of execution thereof or at any time thereafter by such mortgage, saving and excepting the first ten thousand dollars of such principal debt or obligation in any case in which the related mortgage is of real property principally improved or to be improved by a one or two family residence or dwelling. All the provisions of this article shall apply with respect to the additional tax imposed by this subdivision to the same extent as if it were imposed by the said subdivision one of this section, except as otherwise expressly provided in this article. Notwithstanding article eighteen-A of the general municipal law and titles eleven and fifteen of article eight of the public authorities law, no mortgage of real property situated within the state in counties located within the metropolitan commuter transportation district, the Niagara Frontier transportation district, the Rochester-Genesee transportation district, the capital district transportation district, and the central New York regional transportation district executed, given, made, or transferred or assigned by or to an agency created under article eighteen-A of the general municipal law, an authority created under title eleven or fifteen of article eight of the public authorities law, an agent or agent of such agent of such agency or authority, a project operator receiving financial assistance from such agency or authority, a project occupant of such agency or authority, or an owner of a project receiving financial assistance from such agency or authority shall be exempt from the additional tax imposed by this subdivision. For the purposes of this subdivision the term "financial assistance" shall have the same meaning as defined in section eight hundred fifty-four of the general municipal law. The imposition of this additional tax on mortgages recorded in a county outside the city of New York, other than one of the counties from time to time comprising the metropolitan commuter transportation district, the Niagara Frontier transportation district, the Rochester-Genesee transportation district, the capital district transportation district or the central New York regional transportation district may be suspended for a specified period of time or without limitation as to time by a local law, ordinance or resolution duly adopted by the local legislative body of such county.

(b) Any local law, ordinance or resolution suspending the imposition of this additional tax as provided in paragraph (a) of this subdivision, or amending or repealing such local law, ordinance or resolution, shall

take effect only on the first day of the third month succeeding the month in which such local law, ordinance or resolution is duly adopted. Such a local law, ordinance or resolution shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the state tax commission at its office in Albany at least sixty days prior to the date the local law, ordinance or resolution shall take effect. However, the tax commission may waive and reduce such sixty-day notice requirement to a requirement that such certified copy be mailed by registered or certified mail within a period of not less than thirty days prior to such effective date if it deems such action to be consistent with its duties under this article. A certified copy of any local law, ordinance or resolution adopted pursuant to this subdivision shall also be filed with the state comptroller within five days after the date it is duly adopted.

3. Notwithstanding any other provision of law to the contrary, the mortgage recording tax shall not be imposed upon any mortgage executed by a voluntary nonprofit hospital corporation, fire company or voluntary ambulance service as defined in section one hundred of the general municipal law, or upon any mortgage executed by or granted to the dormitory authority.

§ 253-a. Recording tax by a city of one million or more. 1. Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city (A) prior to February first, nineteen hundred eighty-two a tax of fifty cents, (B) on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two with respect to (i) one, two or three-family houses, individual cooperative apartments and individual residential condominium units, and (ii) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, and with respect to all other real property a tax of one dollar and twelve and one-half cents, (C) on and after July first, nineteen hundred eighty-two and before August first, nineteen hundred ninety with respect to real property securing a principal debt or obligation of less

than five hundred thousand dollars, a tax of fifty cents, with respect to one, two or three-family houses, individual cooperative apartments and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of sixty-two and one-half cents, and with respect to all other real property a tax of one dollar and twenty-five cents, and (D) on and after August first, nineteen hundred ninety with respect to real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of one dollar, with respect to one, two or three-family houses and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of one dollar and twelve and one-half cents, and with respect to all other real property a tax of one dollar and seventy-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on such real property situated within such city and recorded on or after the date upon which such tax takes effect and a tax of one dollar on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars. In each instance where the tax imposed pursuant to this subdivision is one dollar and twenty-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, fifty percent of the total amount of such tax, including fifty percent of any interest or penalties thereon, shall be set aside in a special account by the commissioner of finance of such city. In each instance where the tax imposed pursuant to this subdivision is one dollar and seventy-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, thirty-five and seven-tenths percent of the total amount of such tax, including thirty-five and seven-tenths percent of any interest or penalties thereon, shall also be set aside in such special account. Moneys in such account shall be used for payment by such commissioner to the state comptroller for deposit in the urban mass transit operating assistance account of the mass transportation operating assistance fund of any amount of insufficiency certified by the state comptroller pursuant to the provisions of subdivision six of

section eighty-eight-a of the state finance law, and, on the fifteenth day of each month, such commissioner shall transmit all funds in such account on the last day of the preceding month, except the amount required for the payment of any amount of insufficiency certified by the state comptroller and such amount as he deems necessary for refunds and such other amounts necessary to finance the New York city transportation disabled committee and the New York city paratransit system as established by section fifteen-b of the transportation law, provided, however, that such amounts shall not exceed six percent of the total funds in the account but in no event be less than two hundred twenty-five thousand dollars beginning April first, nineteen hundred eighty-six, and further that beginning November fifteenth, nineteen hundred eighty-four and during the entire period prior to operation of such system, the total of such amounts shall not exceed three hundred seventy-five thousand dollars for the administrative expenses of such committee and fifty thousand dollars for the expenses of the agency designated pursuant to paragraph b of subdivision five of such section, and other amounts necessary to finance the operating needs of the private bus companies franchised by the city of New York and eligible to receive state operating assistance under section eighteen-b of the transportation law, provided, however, that such amounts shall not exceed four percent of the total funds in the account, to the New York city transit authority for mass transit within the city.

2. (a) For the purpose of determining whether a mortgage is subject to the tax authorized to be imposed by paragraph (B) or (C) of subdivision one of this section at a rate in excess of fifty cents, or by paragraph (D) of subdivision one of this section at a rate in excess of one dollar, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation, the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by such mortgage shall be aggregated with the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by any other mortgage, where such mortgages form part of the same or related transactions and have the same or related mortgagors. If the commissioner of taxation and finance finds that a

mortgage transaction or mortgage transactions have been formulated for the purpose of avoiding or evading a rate of tax authorized to be imposed under subdivision one of this section in excess of the lowest such authorized rate, rather than solely for an independent business or financial purpose, such commissioner shall treat all of the mortgages forming part of such transaction or transactions as a single mortgage for the purpose of determining the applicable rate of tax. For purposes of this subdivision, there shall be a presumption that all mortgages offered for recording within a period of twelve consecutive months having the same or related mortgagors are part of a related transaction, and such presumption may be rebutted only with clear and convincing evidence to the contrary. The commissioner of taxation and finance may require such affidavits and forms, and may prescribe such rules and regulations, as he determines to be necessary to enforce the provisions of this subdivision.

(b) The term "related", when used in this subdivision with reference to mortgagors, shall include, but shall not be limited to, the following relationships:

(i) members of a family, including spouses, ancestors, lineal descendants, and brothers and sisters (whether by the whole or half blood);

(ii) a shareholder and a corporation more than fifty percent of the value of the outstanding stock of which is owned or controlled directly or indirectly by such shareholder;

(iii) a partner and a partnership more than fifty percent of the capital or profits interest in which is owned or controlled directly or indirectly by such partner;

(iv) a beneficiary and a trust more than fifty percent of the beneficial interest in which is owned or controlled directly or indirectly by such beneficiary;

(v) two or more corporations, partnerships, associations, or trusts, or any combination thereof, which are owned or controlled, either directly or indirectly, by the same person, corporation or other entity, or interests; and

(vi) a grantor of a trust and such trust.

* 4. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under

subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this chapter. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within a city imposing a tax pursuant to section two hundred fifty-three-a", unless a different meaning is clearly required.

* NB Amended as sub 4; should be sub 3

4. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without a city imposing such tax, the amount of such tax due and payable to such city shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty which concerns real property situated in two or more counties. Where such property is situated both within such city and without the state, the amount due and payable to such city shall be determined in the manner prescribed in the second paragraph of section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the city imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

5. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the state tax commission at its office in Albany at least sixty days prior to the date the local law shall take effect. However, the tax commission may waive and reduce such sixty-day notice requirement to a requirement that such certified copy be mailed by registered or certified mail within a period of not less than thirty days prior to such effective date if it deems such action to be consistent with its duties under this section.

7. Certified copies of any local law described in this section shall also be filed with the city clerk, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-b. Credit line mortgage. 1. In the case of a mortgage which is a credit line mortgage, as defined in subdivision two of this section, of real property principally improved or to be improved by a one to six family owner-occupied residence or dwelling, the principal debt or obligation which is or under any contingency may be secured at the date of execution of such mortgage or at any time thereafter within the meaning of this article shall mean the maximum principal amount specified in such mortgage. If the tax imposed by and pursuant to the authority of this article is paid on such maximum principal amount, no further tax shall be payable on advances or readvances by the lender pursuant to the recorded primary mortgage, provided such advances or readvances are made to the original obligor or obligors named in such recorded primary mortgage. In the event the maximum principal amount of a credit line mortgage is increased, a tax is imposed as provided in section two hundred fifty-three and pursuant to the authority of section two hundred fifty-three-a of this article on such new or further indebtedness or obligation when the instrument evidencing such further indebtedness is recorded. In order to better enforce the provisions of this subdivision and for the privilege of recording an instrument evidencing a sale or transfer of real property on which the lien of a

credit line mortgage remains outstanding, in the event that a credit line mortgage remains outstanding after the sale or transfer of the real property securing the credit line mortgage to a person or persons who is or are not related to the original obligor or obligors by blood, marriage or adoption, or where such credit line mortgage that remains outstanding after such sale or transfer is a credit line mortgage of property other than real property principally improved or to be improved by a one to six family owner-occupied residence or dwelling, taxes are imposed at the rates applicable under section two hundred fifty-three and pursuant to the authority of section two hundred fifty-three-a on the principal debt or obligation which is or under any contingency may be secured at the date when the instrument evidencing the sale or transfer is recorded and no such instrument shall be recorded until the taxes imposed in this section are paid.

1-a. In the case of a mortgage which is a credit line mortgage, as defined in subdivision two of this section, of property other than real property principally improved or to be improved by a one to six family owner-occupied residence or dwelling, and where such mortgage is of an amount less than three million dollars, the tax imposed by and pursuant to the authority of this article shall be imposed and paid pursuant to the provisions of subdivision one of this section.

2. For the purposes of this section, a "credit line mortgage" shall mean any mortgage or deed of trust, other than a mortgage or deed of trust made pursuant to a building loan contract as defined in subdivision thirteen of section two of the lien law, which states that it secures indebtedness under a note, credit agreement or other financing agreement that reflects the fact that the parties reasonably contemplate entering into a series of advances, or advances, payments and readvances, and that limits the aggregate amount at any time outstanding to a maximum amount specified in such mortgage or deed of trust. For the purpose of this section, "credit line mortgage" shall not include a reverse mortgage as defined in sections two hundred eighty and two hundred eighty-a of the real property law.

3. The commissioner shall promulgate regulations to provide for the

enforcement and administration of the taxes imposed by or pursuant to subdivisions one and one-a of this section.

§ 253-c. Recording tax imposed by the county of Nassau. 1. Nassau county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such county during the period beginning September first, nineteen hundred ninety-two and ending the earlier of August thirty-first, nineteen hundred ninety-eight or the last day of the month next succeeding the month in which the commissioner of taxation and finance receives notice of sufficient revenues pursuant to paragraph (b) of subdivision five of this section, a tax of one dollar for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of one dollar on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this chapter. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this

state" shall be read as "within Nassau county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without a county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this chapter which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three.

5. (a) Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Nassau during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his office as provided in section two hundred sixty-two of this chapter, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this chapter are first to be apportioned by the commissioner of taxation and finance, shall be paid over by such officer on or before the tenth day of each succeeding month to the county treasurer of Nassau county and, after the deduction by such county treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this chapter shall: (i) if paid to such recording officer during the first sixteen months of imposition of such tax, be deposited in the general fund of such county for expenditure on county purposes; (ii) if so paid at any time thereafter, be deposited in a special fund, to be designated the Nassau

county deficit bond fund, to be created by the county of Nassau separate and apart from any other funds and accounts of the county.

Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this chapter are first to be apportioned by the commissioner of taxation and finance, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

(b) Except as otherwise provided in this section, moneys in the Nassau county bond deficit fund may be appropriated from and transferred to or expended in any fiscal year only for the purpose of payment of the principal of and interest on bonds and notes authorized by a chapter of the laws of nineteen hundred ninety-two, entitled "AN ACT authorizing the county of Nassau to issue serial bonds and/or bond anticipation notes for the purpose of liquidating deficits in the county's general fund and to amend the tax law, in relation to authorizing the county of Nassau to impose a county recording tax on obligations secured by a mortgage on real property; to amend the county government law of Nassau county (Nassau County Charter) and the Nassau county administrative code, in relation to the imposition of an exigency tax". When the amount of moneys in such fund is sufficient to pay all future debt service on such notes and bonds, the comptroller of the county of Nassau shall so notify the commissioner of taxation and finance by certified mail. When no such bonds or notes remain outstanding, such fund shall terminate and moneys remaining therein shall be deposited in the general fund of such county for expenditure on county purposes.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month or in September of nineteen hundred ninety-two on the sixth, thirteenth, twentieth or twenty-seventh day of such month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner of taxation and finance at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-d. Recording tax imposed by the city of Yonkers. 1. The city of Yonkers, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city during the period beginning September first, nineteen hundred ninety-three and ending August thirty-first, two thousand twenty-seven, a tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such city and recorded on or after the date upon which such tax takes effect and a tax of fifty cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this chapter. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within the city of Yonkers", unless a different

meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the city of Yonkers, the amount of such tax due and payable to such city shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this chapter which concerns real property situated in two or more counties. Where such property is situated both within such city and without the state, the amount due and payable to such city shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without such city, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Westchester during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his office as provided in section two hundred sixty-two of this chapter, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this chapter are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the county treasurer of Westchester county and, after the deduction by such county treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this chapter shall be deposited in the general fund of the city of Yonkers for expenditure on city purposes.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be

effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-e. Recording tax imposed by the county of Broome. 1. Broome county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed

pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Broome county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Broome during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the commissioner of finance of Broome county and, after the deduction by such commissioner of finance of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Broome and shall only be appropriated by the county legislature of the county of Broome to fund the office for

aging of such county. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Broome, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-f. Recording tax imposed by the county of Rockland. 1. Rockland county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of

subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Rockland county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of

Rockland during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the commissioner of finance of Rockland county and, after the deduction by such commissioner of finance of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Rockland for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its imposition. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Rockland, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-g. Recording tax imposed by the county of Westchester. 1.

Westchester county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Westchester county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner

similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Westchester during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the commissioner of finance of Westchester county and, after the deduction by such commissioner of finance of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Westchester for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this

section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Westchester, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-h. Recording tax imposed by the county of Lewis. 1. Lewis county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of

this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Lewis county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Lewis during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Lewis county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two

of this article shall be deposited in the general fund of the county of Lewis for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Lewis, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-i. Recording tax imposed by the county of Columbia. 1. Columbia county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such

county and recorded on or after the date upon which such tax takes effect and a tax of fifty cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Columbia county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the

taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Columbia during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the Columbia county treasurer and, after the deduction by the Columbia county treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Columbia for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or

certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Columbia, the secretary of state and the state comptroller within five days after the date it is duly enacted.

*** § 253-j. Recording tax imposed by the county of Sullivan. 1.**

Sullivan county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed

pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Sullivan county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Sullivan during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Sullivan county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Sullivan for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so

imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Sullivan, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB There are 4 § 253-j's

*** § 253-j. Recording tax imposed by the county of Hamilton. 1.**

Hamilton county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof a principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if

the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such provisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Hamilton county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Hamilton during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Hamilton county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Hamilton for expenditure on any county purpose.

Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Hamilton, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

* NB There are 4 § 253-j's

*** § 253-j. Recording tax imposed by the county of Essex.** 1. Essex county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Essex county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of

such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Essex during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Essex county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Essex. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on

the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Essex, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

* NB There are 4 § 253-j's

*** § 253-j. Recording tax imposed by the county of Schoharie. 1.**

Schoharie county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the

extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Schoharie county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Schoharie during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Schoharie county and, after the deduction by such treasurer of the

necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Schoharie for expenditure on any county purpose.

Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Schoharie, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

* NB There are 4 § 253-j's

*** § 253-k. Recording tax imposed by the county of Genesee.** 1. Genesee county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Genesee county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this

article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Genesee during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Genesee county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Genesee for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Genesee, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed November 1, 2027

§ 253-1. Recording tax imposed by the county of Rensselaer. 1.

Rensselaer county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Rensselaer county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the opening paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Rensselaer during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the commissioner of finance of Rensselaer county and, after the deduction by such commissioner of finance of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Rensselaer for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article

are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Rensselaer, the secretary of state and the state comptroller within five days after the date it is duly enacted.

§ 253-m. Recording tax imposed by the county of Wayne. 1. Wayne county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Wayne county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Wayne during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Wayne county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Wayne for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall

also be filed with the county clerk of the county of Wayne, the secretary of state and the state comptroller within five days after the date it is duly enacted.

*** § 253-n. Recording tax imposed by the county of Wyoming.** 1. Wyoming county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Wyoming county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax

imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Wyoming during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Wyoming county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Wyoming for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Wyoming, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

§ 253-o. Recording tax imposed by the county of Chautauqua. 1.

Chautauqua county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such

provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Chautauqua county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Chautauqua during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer

on or before the tenth day of each succeeding month to the treasurer of Chautauqua county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Chautauqua for expenditure on any county purpose.

Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Chautauqua, the secretary of state and the state comptroller within five days after the date it is duly enacted.

*** § 253-p. Recording tax imposed by the county of Albany.** 1. Albany county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining

major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Albany county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and

without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Albany during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the director of finance of Albany county and, after the deduction by such director of finance of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Albany for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Albany, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

§ 253-r. Recording tax imposed by the county of Schenectady. 1.

Schenectady county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article.

Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivision shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Schenectady county", unless

a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the opening paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Schenectady during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the Schenectady county treasurer and, after the deduction by the Schenectady county treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Schenectady for expenditure on any county purpose.

Notwithstanding the provisions of the preceding sentence, the tax so

imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or sections two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Schenectady, the secretary of state and the state comptroller within five days after the date it is duly enacted.

*** § 253-s. Recording tax imposed by the county of Steuben.** 1. Steuben county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such

mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Steuben county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the opening paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in

addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Steuben during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Steuben county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Steuben for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Steuben, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

*** § 253-t. Recording tax imposed by the county of Yates.** 1. Yates county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Yates county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred

sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Yates during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Yates county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Yates for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or

certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Yates, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

*** § 253-u. Recording tax imposed by the county of Herkimer. 1.**

Herkimer county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or

taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Herkimer county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Herkimer during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Herkimer county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Herkimer for expenditure on any county purpose.

Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Herkimer, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

*** § 253-v. Recording tax imposed by the county of Cortland. 1.**

Cortland county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of

subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Cortland county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of

Cortland during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Cortland county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Cortland for expenditure by such county for any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Cortland, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

*** § 253-w. Recording tax imposed by the county of Warren.** 1. Warren county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining

major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Warren county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns

property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Warren during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Warren county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Warren. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Warren, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

*** § 253-x. Recording tax imposed by the county of Cattaraugus. 1.**

Cattaraugus county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Cattaraugus county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Cattaraugus during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Cattaraugus county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Cattaraugus. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be

paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Cattaraugus, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 1, 2027

* NB There are 2 § 253-x's

*** § 253-x. Recording tax imposed by the county of Greene.** 1. Greene county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of fifty cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection

of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Greene county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Greene during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this

article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Greene county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Greene for expenditure by such county for any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Greene, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB There are 2 § 253-x's

* NB Repealed December 1, 2027

*** § 253-y. Recording tax imposed by the county of Madison.** 1. Madison county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at

any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Madison county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording

officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Madison during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Madison county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Madison. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Madison, the

secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB There are 3 § 253-y's

* NB Repealed December 1, 2027

*** § 253-y. Recording tax imposed by the county of Livingston. 1.**

Livingston county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Livingston county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Livingston during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Livingston county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Livingston for expenditure on any county purpose.

Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the

same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Livingston, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB There are 3 § 253-y's

* NB Repealed December 1, 2027

*** § 253-y. Recording tax imposed by the county of Washington. 1.** Washington county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Washington county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Washington during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Washington county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Washington for expenditure on the support of community colleges in accordance with article one hundred twenty-six of the education law. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Washington, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB There are 3 § 253-y's

*** § 253-z. Recording tax imposed by the county of Otsego.** 1. Otsego county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Otsego county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of

section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Otsego during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Otsego county and, after the deduction by such treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Otsego for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of the commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be

effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Otsego, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB Repealed December 31, 2027

* NB There are 2 § 253-z's

*** § 253-z. Recording tax imposed by the county of Chenango. 1.**

Chenango county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of

this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Chenango county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first undesignated paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without the state, the amount due and payable to such county shall be determined in the manner prescribed in the second undesignated paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Chenango during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the treasurer of Chenango county and, after the deduction by such commissioner of finance of the necessary expenses of his or her office provided in section two

hundred sixty-two of this article shall be deposited in the general fund of the county of Chenango for expenditure on any county purpose.

Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

7. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Chenango, the secretary of state and the state comptroller within five days after the date it is duly enacted.

* NB There are 2 § 253-z's

* NB Repealed December 31, 2027

§ 254. Optional tax on prior mortgages. Whenever any mortgage other than a mortgage specified in section two hundred and sixty-four has been recorded prior to July first, nineteen hundred and six, the record owner thereof may file with the recording officer of the county in which the real property, or any part thereof, on which said mortgage is a lien, is situated, a written statement under oath verified by the record owner or the agent or officer of such record owner describing such mortgage by giving the date of the same and the liber and page of the record thereof together with the names of the parties thereto, specifying the amount then remaining unpaid on the debt or obligation secured thereby, and electing that it shall become subject to the tax prescribed by section two hundred and fifty-three of this chapter. Whenever any unrecorded

mortgage has been executed and delivered prior to July first, nineteen hundred and six, the owner thereof may record the same upon filing with the recording officer a similar statement and paying the tax as herein prescribed. A tax shall thereupon be computed, levied and collected upon the amount of the principal debt or obligation unpaid at the time of the filing of such statement, or of the recording of such mortgage and filing of such statement. On the payment of such tax as herein provided, the recording officer shall note on the margin of the record of such mortgage the fact of such statement and of the amount of the tax paid, attested by his signature, whereupon such mortgage and the debt or obligation secured thereby shall be entitled to the exemptions and immunities conferred by this article, and all of the provisions of this article shall thereafter be applicable to said mortgage. Whenever the original mortgage is presented to the clerk together with the statement he shall also note on said original mortgage the fact of the filing of the said statement and also the amount of the tax paid duly attested by his signature, which indorsement shall be conclusive evidence of the payment of such tax.

§ 255. Supplemental mortgages. 1. (a) (i) If subsequent to the recording of a mortgage on which all taxes, if any, accrued under this article have been paid, a supplemental instrument or mortgage is recorded for the purpose of correcting or perfecting any recorded mortgage, or pursuant to some provision or covenant therein, or an additional mortgage is recorded imposing the lien thereof upon property not originally covered by or not described in such recorded primary mortgage for the purpose of securing the principal indebtedness which is or under any contingency may be secured by such recorded primary mortgage, such additional instrument or mortgage shall not be subject to taxation under this article, except as otherwise provided in paragraph (b) of this subdivision, unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the recorded primary mortgage, in which case, a tax is imposed as provided by section two hundred and fifty-three of this article on such new or further indebtedness or obligation.

(ii) Notwithstanding any provision to the contrary in subparagraph (i) of this paragraph, the taxes imposed by or pursuant to the authority of this article shall apply to the recording of a spreading agreement or additional mortgage which imposes the lien thereof upon real property located in any city in the state having a population of one million or more and not originally covered by or described in a recorded primary mortgage, unless the real property that becomes subject to the lien of such spreading agreement or additional mortgage is owned by the mortgagor of the real property subject to the lien of such recorded primary mortgage. If the commissioner of taxation and finance finds that transfers of one or both of such properties in connection with the recording of the spreading agreement or additional mortgage have been undertaken for the purpose of avoiding or evading the application of this paragraph rather than solely for an independent business or financial purpose, such commissioner may disregard such transfers. For purposes of this subparagraph, there shall be a presumption that all transfers of one or both of such properties to related parties within the twelve-month period preceding the recording of such spreading agreement or additional mortgage have been undertaken for tax avoidance or evasion purposes and such presumption may be rebutted only with clear and convincing evidence to the contrary. For this purpose, the term "related" shall have the same meaning as in paragraph (b) of subdivision two of section two hundred fifty-three-a of this article except that references to "fifty percent" in such paragraph (b) shall be read as "twenty-five percent".

(b) Notwithstanding any provision to the contrary in paragraph (a) of this subdivision, taxes are imposed at the rates specified in paragraph (a) of subdivision two of section two hundred fifty-three of this chapter for each one hundred dollars and each remaining major fraction thereof of principal indebtedness or obligation secured by or which under any contingency may be secured by a supplemental instrument or additional mortgage, whether or not there is any new or further indebtedness or obligation other than the principal indebtedness or obligation secured by the recorded primary mortgage, where (i) the supplemental instrument or additional mortgage imposes the lien of a recorded mortgage upon real property not previously subject to the mortgage or where an additional mortgage upon such additional property

is recorded as additional or substitute security for indebtedness or obligation already secured by a recorded mortgage and such property is situated in a county where the tax imposed by such paragraph (a) is in effect and (ii) the recorded primary mortgage was on real property situated in a county which had suspended the tax imposed by such paragraph (a) and the mortgage was recorded without payment of such tax. The taxes imposed by this subdivision shall be distributed pursuant to section two hundred sixty-one of this chapter in the same manner as a tax imposed by subdivision two of section two hundred fifty-three of this chapter.

(c) The taxes imposed by this section shall be paid to the proper recording officer at the time the supplemental instrument or additional mortgage is recorded.

2. (a) If, at the time of recording such instrument or additional mortgage, any exemption is claimed under this section, there shall be filed with the recording officer and preserved in his office a statement under oath of the facts on which such claim for exemption is based. The determination of the recording officer upon the question of exemption shall be reviewable by the tax commission.

(b) If an exemption is claimed under this section, at any time after such instrument or additional mortgage is recorded and tax paid, there shall be filed with the tax commission, as part of the application for refund a statement under oath of the facts on which such claim for exemption is based. A copy of the order of refund of the tax commission shall likewise be filed with the recording officer and preserved in his office.

§ 256. Mortgages for indefinite amounts or for contract obligations.

If the principal indebtedness secured or which by any contingency may be secured by a mortgage is not determinable from the terms of the mortgage, or if a mortgage is given to secure the performance by the mortgagor or any other person of a contract obligation other than the payment of a specific sum of money and the maximum amount secured or which by any contingency may be secured by the mortgage is not expressed therein, such mortgage shall be taxable under section two hundred and

fifty-three of this chapter upon the value of the property covered by the mortgage, which shall be determined by the recording officer to whom such mortgage is presented for record, unless at the time of presenting such mortgage for record the owner thereof shall file with the recording officer a sworn statement of the maximum amount secured or which under any contingency may be secured by the mortgage. If such maximum amount is expressed in the mortgage or in a sworn statement filed as required by this section, such amount shall be the basis for assessing the tax imposed by this article. A statement filed by the owner of a mortgage pursuant to this section shall thereafter at all times be binding upon and conclusive against such owner, the holders of any bonds or obligations secured by such mortgage and all persons claiming through the mortgagee any interest in the mortgage or the mortgaged premises. If the maximum amount secured or which by any contingency may be secured by the mortgage is not expressed in the mortgage or in a sworn statement as authorized by this section, the recording officer at the time such mortgage is offered for record may require the mortgagor or mortgagee to furnish him with proofs as to such facts as he deems necessary for the purpose of computing the value of the property covered by the mortgage and such proofs shall include an affidavit of appraisal of the value of the property made by at least two competent, disinterested persons and shall be preserved in his office. His determination and copies of the proofs as to the basis for computing the tax on such mortgage shall be forwarded to and subject to review by the state tax commission. Such mortgage shall not be recorded until the statement is filed or the proofs are furnished as required by this article.

Whenever any such mortgage shall have been recorded without the payment of the tax as herein provided, and it shall thereafter be determined by the tax commission, after an opportunity to be heard by the parties in interest, that the failure to pay such tax was due to an honest misconception on the part of the recording officer or the owner of the instrument as to the nature of such instrument and its taxability under this article, the tax commission may make an order permitting the recording officer to file the aforesaid statement nunc pro tunc as of the date of the recording of the mortgage. The payment of the tax may be made on the basis of such statement with interest thereon at the rate of

six per centum per annum as provided in section two hundred and fifty-eight of this article.

§ 257. Payment of taxes. The taxes imposed by this article shall be payable on the recording of each mortgage of real property subject to taxes thereunder. Such taxes shall be paid to the recording officer of any county in which the real property or any part thereof is situated. It shall be the duty of such recording officer to indorse upon each mortgage a receipt for the amount of the tax so paid. Any mortgage so indorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax indorsed upon each mortgage shall be recorded therewith. The record of such receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage.

§ 257-a. Refund of mortgage taxes after rescission of certain credit transactions. 1. As used in this section, a "statutory right of rescission" means the right of an obligor to rescind a consumer credit transaction in which a security interest, including a real property mortgage, is retained or acquired in any real property which is used or expected to be used as a residence of the obligor provided for in section one hundred twenty-five of title one, the "Truth in Lending Act," of the federal Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146 et seq.) and in the regulations issued by the Board of Governors of the Federal Reserve System pursuant to said title of said act.

2. A person who has paid the taxes imposed by this article on the recording of a mortgage of real property has a right to a refund of the mortgage taxes so paid if a mortgagor upon the mortgage exercises the statutory right of rescission with respect thereto and a discharge of the mortgage has been recorded.

3. The State Tax Commission shall provide by regulation how a person having a right to a refund of mortgage taxes pursuant to subsection two

may obtain the refund and the cities, towns, villages or officers to which or to whom the mortgage tax moneys have been paid, paid over, distributed, or allotted shall refund such mortgage tax moneys to a person having a right to the refund thereof.

§ 258. Effect of nonpayment of taxes. 1. No mortgage of real property shall be recorded by any county clerk or register, unless there shall be paid the taxes imposed by and as in this article provided. No mortgage of real property which is subject to the taxes imposed by this article shall be released, discharged of record or received in evidence in any action or proceeding, nor shall any assignment of or agreement extending any such mortgage be recorded unless the taxes imposed thereon by this article shall have been paid as provided in this article. Provided, however, except as otherwise provided in subdivision two of this section, in order to obtain a release or discharge of record where the mortgagor is not liable for the special additional tax imposed under subdivision one-a of section two hundred fifty-three of this chapter, such mortgagor or any subsequent owner of the mortgaged property or a part thereof may pay the tax imposed under such subdivision one-a and penalty, and may either apply for the credit allowable under this chapter for payment of such additional tax or may maintain an action to recover the amounts so paid against any person liable for payment of the tax or any subsequent assignees or owners of such mortgage or consolidated mortgage of which such mortgage is a part, as if such amounts of tax and penalty were a debt personally owed by such persons to the mortgagor or subsequent owner. No judgment or final order in any action or proceeding shall be made for the foreclosure or the enforcement of any mortgage which is subject to any tax imposed by this article or of any debt or obligation secured by any such mortgage, unless the taxes imposed by this article shall have been paid as provided in this article; and, except otherwise provided in subdivision two of this section, whenever it shall appear that any mortgage has been recorded without payment of a tax imposed by this article there shall be added to the tax a sum equal to one-half of one per centum thereof for each month or fraction of a month for the period that the tax remains unpaid except where it could not be determined from the face of the

instrument that a tax was due, or where an advance has been made on a prior advance mortgage or a corporate trust mortgage without payment of the tax, in which case there shall be added to the tax a sum equal to one per centum thereof for each month or fraction of a month for the period that the tax remains unpaid. In any case where a mortgage of real property subject to a tax imposed by this article has heretofore been recorded or is hereafter recorded in good faith, and the county clerk or register has held such mortgage nontaxable or taxable at one amount, and it shall later appear that it was taxable or taxable at a greater amount, the commissioner of taxation and finance may remit the penalties in excess of one-half of one per centum per month.

2. In any city in this state having a population of one million or more, in order to obtain a release or discharge of record where the mortgagor is not liable for the special additional tax imposed under subdivision one-a of section two hundred fifty-three of this chapter, such mortgagor or any subsequent owner of the mortgaged property or a part thereof may pay the tax imposed under such subdivision one-a with accrued interest and any penalties, and may either apply for the credit allowable under this chapter for payment of such additional tax or may maintain an action to recover the amounts so paid against any person liable for payment of the tax or any subsequent assignees or owners of such mortgage or consolidated mortgage of which such mortgage is a part, as if such amounts of tax and penalties were a debt personally owed by such persons to the mortgagor or subsequent owner. No judgment or final order in any action or proceeding shall be made for the foreclosure or the enforcement of any mortgage which is subject to any tax imposed by this article or of any debt or obligation secured by any such mortgage, unless the taxes imposed by this article shall have been paid as provided in this article; and whenever it shall appear that any mortgage has been recorded without payment of a tax imposed by this article there shall be added to the tax interest on the amount of tax not paid. The commissioner of taxation and finance shall set the rate of interest to be paid on any underpayment of tax imposed by this article at the rate of interest prescribed in subsection (e) of section one thousand ninety-six of this chapter for underpayments of tax. Such interest shall be compounded daily. In addition to interest there shall be added to the

tax a penalty of ten percent of the amount of tax due for the first month of delay in payment of the tax plus two percent of the amount of tax for each month of delay thereafter, up to a maximum of twenty-five percent, where it could not be determined from the face of the instrument that a tax was due, or where an advance has been made on a prior advance mortgage or a corporate trust mortgage or a re-advance had been made on a mortgage where the original indebtedness it secured had been paid in whole or in part. In any case where a mortgage of real property subject to a tax imposed by this article has heretofore been recorded or is hereafter recorded in good faith, and the county clerk or register has held such mortgage nontaxable or taxable at one amount, and it shall later appear that it was taxable or taxable at a greater amount, the commissioner of taxation and finance may remit the penalties but not interest.

§ 258-a. Payment of tax on instruments not recorded. An instrument taxable under this article but which is not entitled to be recorded, may nevertheless be presented to the recording officer of the county in which the real property or any part thereof affected by said instrument is situated, and there may be paid to such officer the amount of the tax which would be payable under this article on the recording of such instrument if the same were entitled to be recorded. Such officer shall receive such amount and such payment shall have the same force and effect, so far as this article is concerned, as if such instrument had been duly recorded and the tax thereon paid. It shall be the duty of the recording officer to indorse upon the instrument a receipt for the amount of the tax so paid. A copy of each instrument upon which the tax is paid as above provided shall be filed with the recording officer and preserved among his mortgage tax records.

Where an unrecorded instrument subject to the tax imposed by this article has been lost or destroyed, the tax commission, upon presentation of proper proofs, may determine the taxable amount of such instrument and by order authorize the recording officer to receive and receipt for such tax as fully and with the same force and effect, so far as this article is concerned, as if the instrument had been duly

recorded and the tax thereon paid.

The filing or recording of a notice of the payment of tax under this section is ineffective to give notice under article nine of the real property law of any estate or interest in the real property affected by the instrument on which tax is being paid or to create a duty of inquiry with regard thereto.

§ 259. Trust mortgages. In the case of mortgages made by corporations in trust to secure payment of bonds or obligations issued or to be issued thereafter, if the total amount of principal indebtedness which under any contingency may be advanced or accrued or which may become secured by any such mortgage which is subject to this article has not been advanced or accrue thereon or become secured thereby before such mortgage is recorded, it may contain at the end thereof a statement of the amount which at the time of the execution and delivery thereof has been advanced or accrued thereon, or which is then secured by such mortgage; thereupon the tax payable on the recording of the mortgage shall be computed on the basis of the amount so stated to have been so advanced or accrued thereon or which is stated to be secured thereby. Such statement shall thereafter at all times be binding upon and conclusive against the mortgagee, the holders of any bonds or obligations secured by such mortgage and all persons claiming through the mortgagee any interest in the mortgage or in the mortgaged premises. Whenever a further amount is to be advanced under the original mortgage, or shall accrue thereon or become secured thereby, the corporation making such mortgage shall pay the tax on such amount at or before the time when such amount is to be advanced, accrues or becomes secured and shall, at the time of paying such tax, file in the office of the recording officer where such mortgage has been or is first recorded and with the tax commission a statement, verified by the secretary, treasurer or other proper officer, of said corporation of the amount of principal indebtedness to be so advanced, accruing or becoming secured, and the certification of any bond or bonds by the trust mortgagee shall be deemed an advance under this article. Such additional tax shall be paid to the recording officer where such mortgage has been or is first

recorded and a receipt therefor shall be endorsed upon the mortgage and payment therefor shall be noted in the margin of the record of such mortgage and if requested a duplicate receipt for such payment shall also be given to the party paying such tax and the note of such payment or additional payment or such receipt shall have the same force and effect as the record of receipt of the tax which under this article is payable at or before the recording of the mortgage. If such additional tax is not paid as required by this section, the trust mortgagee shall not certify any bond or other obligation issued on account thereof. The corporation making such mortgage or the owner of the property which secures the mortgage debt shall annually within thirty days after July first, and until it shall appear by such statement that the maximum amount of principal indebtedness secured by such mortgage has been advanced, has accrued or become secured and the tax thereon paid, file in the office of the tax commission and the recording officer where such mortgage has been or is first recorded a statement, verified by the secretary, treasurer or other proper officer of said corporation, showing:

1. The name of the mortgagor and the mortgagee;
2. The date of the mortgage and the county where first recorded;
3. The maximum amount of principal debt or obligation which under any contingency may be secured by such mortgage;
4. The amount advanced on such mortgage during the year ending June thirtieth preceding, with the date and amount of each advancement;
5. In the case of a mortgage recorded prior to July first, nineteen hundred and six, the first annual statement filed under this section as hereby amended, shall state the total amount advanced prior to July first, nineteen hundred and six, and the date and the amount of each subsequent advancement to the end of the period covered by the statement.

A failure to file any statement required by this section within the

specified time shall subject the corporation or other person required to file such statement to a penalty of not less than one dollar nor more than one hundred dollars for each one thousand dollars of the maximum amount of principal indebtedness which is or under any contingency may become secured by the mortgage, which penalty in the aggregate shall not exceed the sum of five thousand dollars, recoverable by the attorney-general in an action brought in the name of the people of the state of New York.

§ 260. Determination and apportionment by the state tax commission.

When the real property covered by a mortgage is situated in more than one tax district, the state tax commission shall apportion the tax paid on such mortgage between the respective tax districts upon the basis of the relative assessments of such real property as the same appear on the last assessment-rolls. If, however, the whole or any part of the property covered by such a mortgage is not assessed upon the last assessment-roll or rolls of the tax district or districts in which it is situated, or is so assessed, as a part of a larger tract, that the assessed value cannot be determined, or if improvements have been made to such an extent as materially to change the value of the property so assessed, the tax commission may require the local assessors in the respective tax districts, or the mortgagor, or mortgagee, to furnish sworn appraisals of the property in each tax district, and upon such appraisals shall determine the apportionment. If such mortgage covers real property in two or more counties, the tax commission shall determine the proportion of the tax which shall be paid by the recording officer who has received the same to the recording officers of the other counties in which are situated the tax districts entitled to share therein. When any recording officer shall pay any portion of a tax to the recording officer of another county, he shall forward with such tax a description sufficient to identify the mortgage on which the tax has been paid, and the recording officer receiving such tax shall note on the margin of the record of such mortgage the fact of such payment, attested by his signature. The tax commission shall make an order of determination and apportionment in respect to each such mortgage and file a certified copy thereof with the recording officer of each county

in which a part of the mortgaged real property is situated.

When the real property covered by a mortgage is partly within the state and partly without the state it shall be the duty of the tax commission to determine what portion of the mortgage or of advancements thereon shall be taxable under this article. Such determination shall be made in the following manner: First: Determine the respective values of the property within and without the state, and deduct therefrom the amount of any prior existing mortgage liens, excepting such liens as are to be replaced by prior advancements and the advancement under consideration. Second: Find the ratio that the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property. Third: Make the determination of the portion of the mortgage or of the advancements thereon which shall be taxable under this article by applying the ratio so found. If a mortgage covering property partly within and partly without the state is presented for record before such determination has been made, or at the time when an advance is made on a corporate trust mortgage or on a prior advance mortgage, there may be presented to the recording officer a statement in duplicate verified by the mortgagor or an officer or duly authorized agent of the mortgagor, in which shall be specified the net value of the property within the state and the net value of the property without the state covered by such mortgage. One of such statements shall be filed by the recording officer and the other shall be forthwith transmitted by him to the state tax commission. The tax payable under this article before the determination by the tax commission shall be computed upon such portion of the principal indebtedness secured by the mortgage, or of the sum advanced thereon, as the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property as set forth in such statement. The tax commission shall on receipt of the statement from the recording officer and on not less than ten days' notice served personally or by mail upon the mortgagor, the mortgagee and the state comptroller, proceed to make the required determination. In determining the separate values of the property within and without the state the tax commission shall consider only the tangible property, real and personal, except that leases of real property shall be deemed tangible property. For the purpose of

determining such value the tax commission may require the mortgagor or mortgagee to furnish by affidavit or verified report such information or data as it may deem necessary, and may require and take the testimony of the mortgagor, mortgagee or any other person. A certified copy of the order of determination and apportionment shall be delivered personally or by mail to the mortgagor, the mortgagee and the state comptroller, and any tax under such determination which has not been paid shall be paid within ten days after service of such certified copy; if, however, the tax paid at the time of filing the statement hereinbefore specified with the recording officer is in excess of the tax determined to be payable, the certificate of determination and apportionment shall direct the recording officer to refund to the person paying such tax the amount of such excess; provided that no refund shall be made of any taxes paid pursuant to a previous determination.

The tax commission shall adopt rules to govern the procedure and the manner of taking evidence in all the matters provided for by this section and may require verified statements to be furnished either by boards of assessors, recording officers or other persons having knowledge in relation to such matters. Failure on the part of any person or officer to furnish a statement or other data when required so to do pursuant to the provisions of this section shall render such person or officer liable to a penalty of one hundred dollars, to be recovered by the attorney-general in an action brought in the name of the people of the state of New York.

In making determination and apportionment under this section the tax commission shall consider each advancement made upon a mortgage after July first, nineteen hundred and six, as a new mortgage. In all cases under this section where the provisions for distribution of the tax among tax districts are inapplicable or inadequate, the tax commission shall establish a basis of apportionment that will be equitable and fair.

§ 261. Payment over and distribution of taxes. 1. The balance of all moneys paid to the recording officer of each county during each month

upon account of the additional taxes imposed pursuant to subdivision two of section two hundred fifty-three of this article, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by him or her on or before the tenth day of each succeeding month as follows: (a) with respect to those counties comprising the metropolitan commuter transportation district, as defined by the provisions of section twelve hundred sixty-two of the public authorities law, to the metropolitan transportation authority to be applied in any authority fiscal year beginning on or after January first, nineteen hundred eighty-seven (i) first, to meet the general, administrative and operating expenses of the authority net of reimbursements, recoveries and adjustments, not including the expenses of any subsidiaries thereof which operate any transportation facility, (ii) second, from any remaining revenues, fifty-five per centum of such revenues shall be paid by the metropolitan transportation authority to the transit account of the metropolitan transportation authority special assistance fund established by section twelve hundred seventy-a of the public authorities law; and (iii) the remaining forty-five per centum shall be paid by the metropolitan transportation authority to the commuter railroad account of the metropolitan transportation authority special assistance fund established by section twelve hundred seventy-a of the public authorities law; (b) with respect to those counties comprising the Niagara Frontier transportation district, as defined by the provisions of section twelve hundred ninety-nine-b of the public authorities law, to the Niagara Frontier transportation authority; (c) with respect to those counties comprising the Rochester-Genesee regional transportation district, as defined by the provisions of section twelve hundred ninety-nine-cc of the public authorities law, to the Rochester-Genesee Regional Transportation Authority; (d) with respect to those counties comprising the capital district transportation district, as defined by the provisions of section thirteen hundred two of the public authorities law, to the capital district transportation authority; (e) with respect to those counties comprising the central New York regional transportation district, as defined by the provisions of

section thirteen hundred twenty-seven of the public authorities law, to the central New York regional transportation authority; (f) with respect to the county of Dutchess or the county of Orange or the county of Rockland if any such county withdraws from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of the public authorities law and does not suspend the imposition of such additional tax, to the county treasurer of such county if such county provides that the moneys shall be used for mass transportation purposes but, if any such county which so withdraws and which does not so suspend does not so provide, to the comptroller pursuant to paragraph (p) of this subdivision; * (g) with respect to the county of Washington, to the county treasurer of such county to be used to pay for any and all expenses incurred by such county for the support of community colleges pursuant to article one hundred twenty-six of the education law; with respect to the county of Essex, to the county treasurer of such county to be used to pay for any and all expenses incurred by such county for county office and court facility projects and, after all such expenses are paid, for any and all expenses incurred by such county for county correctional and public safety facility projects;

* NB Effective until December 1, 2027

* (g) with respect to the county of Washington, to the county treasurer of such county to be used to pay for any and all expenses incurred by such county for the support of community colleges pursuant to article one hundred twenty-six of the education law; with respect to the county of Essex, to the county treasurer of such county to be used to pay for any and all expenses incurred by such county for county office and court facility projects;

* NB Effective December 1, 2027

(h) with respect to the county of Franklin, to the county treasurer of such county to be used to pay for any and all expenses incurred by such county for county office and county correctional facility projects; (i) with respect to the county of Clinton, to the county treasurer of such county to be used to pay for any and all expenses incurred by such county for county office and other county capital projects; (j) with respect to the county of Chautauqua, to the county treasurer of such county to be used to pay for any and all expenses incurred by such

county for county correctional facility and court facility projects, and debt service thereon, including but not limited to, related heating, ventilation, air-conditioning and parking infrastructure upgrades; (j-1) with respect to the county of Tompkins, to the county treasurer of such county for mass transportation purposes; (k) with respect to the county of Allegany, to the county treasurer of such county for deposit into the general fund of the county of Allegany; (l) with respect to the county of Schuyler, to the county treasurer of such county to be used to pay for any and all expenses incurred by such county for the support of community colleges pursuant to article one hundred twenty-six of the education law; (m) with respect to the county of Delaware, to the county treasurer of such county to be used to pay for the cost of the county correctional facility and public safety building complex and the county composting facility; * (n) with respect to the county of Fulton, to the county treasurer of such county for deposit into the general fund of the county of Fulton;

* NB Repealed November 30, 2027

(o) with respect to the county of Steuben, to the county treasurer of such county for deposit into the general fund of the county of Steuben; (p) with respect to the remaining counties of the state except Cattaraugus county which have not suspended the imposition of such additional tax pursuant to subdivision two of section two hundred fifty-three of this article, to the comptroller to be paid by them into the general fund in the state treasury to the credit of the state purposes account; provided that money paid to the comptroller with respect to any such remaining county in which on the date of such payment any mass transportation, airport or aviation, municipal historic site, municipal park, community mental health and developmental disabilities facility, or sewage treatment capital project is being carried out by a municipality with state aid, or for which state aid will be paid, pursuant to the provisions of title one of chapter seven hundred seventeen of the laws of nineteen hundred sixty-seven, section 17.05 of the parks, recreation and historic preservation law, section 41.18 of the mental hygiene law, or section 17-1903 of the environmental conservation law, shall be applied by them to increase the amount of aid for which the state is obligated in respect to such project on such date, provided that any such increase in state aid may not, together

with any federal funds paid or to be paid on account of the cost of such project, exceed the total cost thereof, and where more than one such capital project is being carried out on such date within such county, the application of such monies by the comptroller shall be pro-rated among such municipalities on the basis of the respective amounts of state aid which are so obligated on such date; (q) with respect to the county of Cattaraugus, to the comptroller to be paid by them into the general fund in the state treasury to the credit of the state purposes account for the construction of a county office building and a county department of public works office building, or debt service thereon being carried out by the county of Cattaraugus up to but not exceeding the total cost for such county office building and county department of public works building, or debt service thereon less the amount of any state aid or federal funds paid or to be paid on account of such project or debt service thereon; and (r) with respect to the county of Chenango, to the county treasurer of such county for deposit into the general fund of the county of Chenango. Notwithstanding the provisions of the preceding sentence, additional taxes so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

If and to the extent that either metropolitan transportation authority or Niagara Frontier transportation authority or Rochester-Genesee regional transportation authority or capital district transportation authority or central New York regional transportation authority shall certify that the proceeds of such additional tax received by it for any calendar year subsequent to nineteen hundred sixty-nine are in excess of its needs, present and projected, and of those of its subsidiary corporations, such excess shall be paid over at the end of such calendar year to the comptroller for payment or application by him or her in accordance with the provisions of paragraph (p) of the opening paragraph of this subdivision. For the purposes of such application any such excess shall be allocated among the counties comprising a transportation district in the same proportion that their respective recording officers

paid over additional taxes hereunder during the whole of the calendar year which is the subject of the certification. For the counties comprising the city of New York, any such application shall be for the benefit of such city.

2. The balance of all moneys paid to the recording officer of each county during each month upon account of the special additional taxes imposed pursuant to subdivision one-a of section two hundred fifty-three of this chapter, after deducting the necessary expenses of his office as provided in section two hundred sixty-two, except taxes paid upon mortgages which under the provisions of section two hundred sixty are first to be apportioned by the tax commission, shall be paid over by him on or before the tenth day of each succeeding month to the state of New York mortgage agency created pursuant to title seventeen of article eight of the public authorities law for deposit to the credit of the mortgage insurance fund created pursuant to such title, and (i) except that with respect to mortgages recorded on and after May first, nineteen hundred eighty-seven, the balance of all moneys paid upon account of such special additional taxes during each month to the recording officers of the counties comprising the metropolitan commuter transportation district, as defined by section twelve hundred sixty-two of the public authorities law, on mortgages of any real property principally improved or to be improved by a structure containing six residential dwelling units or less with separate cooking facilities, after the deduction of such expenses, shall be paid over by him on or before the tenth day of each succeeding month to the metropolitan transportation authority for deposit in the corporate transportation account of the metropolitan transportation special assistance fund established by section twelve hundred seventy-a of the public authorities law, and (ii) except that with respect to mortgages recorded on and after May first, nineteen hundred eighty-seven, the balance of all moneys paid upon account of such special additional taxes during each month to the recording officers of the county of Erie on mortgages of any real property principally improved or to be improved by a structure containing six residential dwelling units or less with separate cooking facilities, after the deduction of such expenses, shall be paid over by him on or before the tenth day of each succeeding month

to the Niagara Frontier transportation authority. Notwithstanding the provisions of the preceding sentence, the special additional taxes so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of section two hundred sixty are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

3. On or before the tenth day of each month the recording officer of each county shall pay over to the county treasurer of said county, and in the counties of New York, Kings, Queens, Richmond and Bronx to the commissioner of finance of the city of New York for credit to the general fund of such city, the balance of the moneys received during the preceding month upon account of taxes paid to him or her as herein prescribed, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of section two hundred sixty of this article are first to be apportioned by the commissioner, which taxes and money shall be paid over by the commissioner of finance of the city of New York as provided by the determination of the commissioner. In each county not within the city of New York, the whole of the net amount of such balance, after the deduction by the county treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article, shall be held by him or her and shall be allocated to the tax districts of the county according to the location of the real property covered by the respective mortgages upon which the tax was collected. The recording officer and county treasurer shall prepare a joint semi-annual report on or before May fifteenth and on or before November fifteenth in each year showing the amounts to be credited to each tax district of the county of the moneys collected under this article during the preceding periods of six months each which ended respectively on March thirty-first and September thirtieth. Such report shall be made in duplicate in accordance with the rules and regulations of the commissioner and filed with the clerk of the board of supervisors and the commissioner. The board of supervisors, on or before the fifteenth day of June and on or before the fifteenth day of December in each year, shall issue its

warrant for the payment to the respective tax districts of the amounts so credited, provided, however, that in a county in which a town contains within its limits an incorporated village, or portion thereof, the board of supervisors shall apportion to such village so much of the share credited to the town as the assessed value of said village or portion thereof bears to twice the total assessed valuation of the town, and provided, further, that, at the option of the governing board of the county, the county may instead prepare and file such a joint report and make such payments on a monthly or quarterly basis. Where the county elects to make monthly payments, the recording officer and county treasurer shall prepare a joint report on or before the fifteenth day of each month showing the amounts to be credited to each tax district of the county and the moneys collected under this article for the month preceding the most recently concluded month, and the board of supervisors shall issue its warrant for payment on or before the fifteenth day of the following month. Where the county elects to make quarterly payments, the recording officer and county treasurer shall prepare such a joint report on or before the fifteenth day of May, August, November, and February, showing the amounts to be credited to each tax district of the county of moneys collected under this article for the preceding three-month period ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first, respectively and the board of supervisors shall issue its warrant for payment on or before the fifteenth day of June, September, December, and March, respectively. The warrant shall direct payment to the city treasurer of the amount due the city, to the town supervisor of the amount due the town, and to the village treasurer of the amount to which the village shall be entitled. Mortgage tax moneys allotted to cities, towns and villages shall be applied to the payment of the general expenses thereof. The commissioner shall prescribe the method of adjustment and correction of errors heretofore or hereafter made in the distribution of moneys collected under this article. Provided, however that in the town of Ossining, county of Westchester, monies due to the unincorporated portion of the town shall be placed in the unincorporated town fund instead of into the general fund of such town.

§ 262. Expenses of officers. Recording officers and county treasurers shall severally be entitled to receive all their necessary expenses for the purposes of this article, including printing, hire of clerks and assistants, being first approved and allowed by the tax commission and, after audit by the comptroller, shall be retained by them out of the moneys coming into their hands. In counties wholly within the city of New York for the purposes of retirement the recording officers, clerks and assistants shall be considered as in the city service to the same extent as though their salaries had actually been paid by the city of New York.

§ 263. Supervisory power of commissioner of taxation and finance and comptroller. 1. (a) The commissioner of taxation and finance shall have general supervisory power over all recording officers in respect of the duties imposed by this article and he may make such rules and regulations for the government of recording officers in respect to the matters provided for in this article as he may deem proper, provided that such rules and regulations shall not be inconsistent with this or any other statute. Whenever a duly verified application for a refund of mortgage taxes erroneously paid is made to the commissioner of taxation and finance or where a discharge has been recorded in the case of a mortgagor exercising a statutory right of rescission in accordance with section two hundred fifty-seven-a of this article who has filed such application, it shall be the duty of such commissioner, or the delegate duly authorized by him in writing, to determine the amount that has been so paid or which is refundable by reason of the exercise of the right of rescission and, after audit thereof by the comptroller, to make an order directing the appropriate recording officer to refund the amount so determined, together with interest at the rate of one-half of one per centum thereof for each month or fraction of a month for the period from the date the application for refund in processible form is received by the commissioner of taxation and finance to a date preceding the date of the refund check by not more than thirty days, except as otherwise provided in paragraph (b) of this subdivision. Provided, however, no such interest shall be allowed or paid if the refund check is issued within ninety days of the date such application is received and no

interest shall be allowed or paid if the amount of interest would be less than one dollar. The amount so ordered to be paid shall be paid from mortgage tax moneys in such recording officer's hands, or which shall come to his hands, to the party entitled to receive it and the recording officer shall charge such amount back to the state, public benefit corporation or tax district, as the case may be, that may have been credited with the same. No refund of tax paid under this article shall be allowed unless the application for refund is filed within two years from the time the erroneous payment of tax was received or, in the case of a refund arising out of the exercise of the right of rescission, within two years from the time of payment of tax or one year from the date of discharge of the mortgage which is subject to such exercise, whichever is later. If any recording officer shall have collected and paid over to the treasurer of any county, or to the state or a public benefit corporation, a tax paid upon a mortgage which under the provisions of section two hundred sixty of this chapter is to be apportioned by the commissioner of taxation and finance before such apportionment has been made, or if any recording officer shall have paid over to a county treasurer, the state or a public benefit corporation more money than required on account of mortgage taxes, such recording officer shall make a report to the commissioner of taxation and finance in the form of a verified statement of facts and said commissioner shall determine the method of adjustment and, after audit thereof by the comptroller, shall issue his order accordingly.

(b) In any city of this state having a population of one million or more, the overpayment rate referred to in paragraph (a) of this subdivision shall be set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six percent per annum for the period from the date the application for refund in processible form is received by the commissioner of taxation and finance to a date preceding the date of the refund check by not more than thirty days.

2. The comptroller shall have general supervisory power over all county treasurers in respect to the duties imposed upon them by this article, and may make such rules and regulations, not inconsistent with this or any other statute, for the government of said county treasurers

as he deems proper to secure a due accounting for all taxes and moneys collected or received and refunds and interest paid pursuant to any provision of this article.

§ 264. Tax on prior advance mortgages. Whenever any part of the amount of the principal indebtedness which is or under any contingency may be secured by a mortgage recorded prior to July first, nineteen hundred and six, is advanced after July first, nineteen hundred and six, the tax prescribed by section two hundred and fifty-three of this article is hereby imposed on the amount of principal indebtedness so advanced, which tax shall be payable at the same time and in the same manner as taxes imposed by section two hundred and fifty-nine of this article, and all the provisions of section two hundred and fifty-nine in relation to the time and manner of paying such tax, the filing of statements in relation to the time and amount of such advances, and penalties for failure to file the same shall apply to advances made under this section and the payment of a tax thereon, except that if the mortgagor is not a corporation, such statements shall be filed by the owner of the mortgage, who, for failure to do so, shall be subject to the penalties prescribed by such section. In case said mortgage was given to secure the payment of a series of bonds, the mortgagor may, at the time of paying such tax, present to the recording officer, the bonds representing the portion of the principal indebtedness secured by said mortgage upon which the tax is to be paid, and also file with said recording officer a statement verified by the mortgagor or an officer or duly authorized agent or attorney of the mortgagor specifying that said bonds, so presented, are the bonds representing that portion of the principal indebtedness secured by said mortgage upon which the tax is to be paid and that said bonds are secured by a mortgage recorded in said office stating the date of said mortgage and the liber and page of the record of the same. It shall be the duty of such recording officer to indorse upon each of said bonds, so presented to him, a statement signed by him to the effect that the tax imposed by this article on that portion of the principal indebtedness secured by said mortgage represented by said bonds has been paid, and said statement shall be conclusive proof of such payment. Notwithstanding the exception

contained in section two hundred and fifty-four, the record owner of any mortgage recorded prior to July first, nineteen hundred and six, other than a corporate trust mortgage, may file in the office of the recording officer where such mortgage is first recorded a statement in form and substance as required by section two hundred and fifty-four of this article, except that it shall specify and state the amount of all advancements made thereon prior to said date, giving the date and amount of each advancement and the amount of such prior advancements remaining unpaid, and thereby elect that the same be taxed under this article; and any mortgagor or mortgagee under a corporate trust mortgage given to secure a series of bonds or the owner of any such bond or bonds secured thereby may file in the office of the recording officer where such mortgage is first recorded a statement in form and substance as required by section two hundred and fifty-four of this article, except that it shall specify the serial number, the date and amount of each bond and otherwise sufficiently describe the same to identify it as being secured by such mortgage, and thereby elect that such bond or bonds be taxed under this article, and such bond or bonds shall be taxed upon the whole amount thereof notwithstanding the provisions of section two hundred and sixty of this article. A tax shall thereupon, in the case of mortgages other than corporate trust mortgages, be computed, levied and collected upon the amount of the principal debt or obligation represented by said unpaid prior advancements at the time of filing such statement, or, in the case of a corporate trust mortgage, upon the amount of the bond or bonds specified in the statement filed, at the rate prescribed by section two hundred and fifty-three of this article. Said bonds representing prior advancements under corporate trust mortgages and taxed as herein provided may be presented to the recording officer, whose duty it is to collect said tax, for indorsement and he shall thereupon indorse upon each of said bonds a statement, attested by his signature, of the payment of the tax as provided in this section in respect to bonds representing subsequent advancements, and the record owner of any other mortgage taxed upon prior advancements as herein provided may present said mortgage to the recording officer and thereupon such officer shall note upon the same the filing of the statement and the amount of the tax paid, attested by his signature. In all such cases the recording officer shall note on the margin of the

record of such mortgage the filing of such statement and the amount of the tax paid, and, in case of bonds secured by corporate trust mortgages, the serial number of each such bond. The words "bond" and "bonds" as used in this section shall be deemed to embrace all notes or other evidences of indebtedness secured by mortgages taxable under this section. In case of any mortgage taxable under this section, the portion of the indebtedness secured thereby upon which the tax imposed by this section is paid, and such portion only, shall be exempt from taxation under the provisions of section two hundred and fifty-one of this article. Whenever the tax imposed by section two hundred and sixty-four of this article as said section existed prior to May thirteenth, nineteen hundred and seven, has been paid with respect to any mortgage, no additional tax shall accrue on such mortgage under this section as hereby enacted and such mortgage and the debt or obligation secured thereby, shall continue to be entitled to the exemptions and immunities conferred by this article and all of the provisions of this article shall remain applicable to such mortgage. All taxes imposed by or which became due, payable or collectible on or before the thirtieth day of June, nineteen hundred and six, pursuant to chapter seven hundred and twenty-nine of the laws of nineteen hundred and five, and all taxes which under section two hundred and fifty-eight of this chapter became due and payable on the thirtieth day of July, nineteen hundred and six, and all other taxes, if any, which were imposed by chapter seven hundred and twenty-nine of the laws of nineteen hundred and five on any mortgage recorded prior to the first day of July, nineteen hundred and six, in respect to any period ending on or before the first day of July, nineteen hundred and six, shall be imposed, become due, be payable and collectible and shall be paid over and distributed in the same manner, and with the same force and effect as if this article had not been enacted; and for the purpose of collecting, paying over, distributing and enforcing any such taxes, chapter seven hundred and twenty-nine of the laws of nineteen hundred and five shall be deemed to be in force, and the lien for such taxes shall attach and such taxes shall be levied and collected as provided in chapter seven hundred and twenty-nine of the laws of nineteen hundred and five, anything herein contained to the contrary notwithstanding.

§ 265. Tax a lien; exceptions. The tax in this article imposed shall be deemed and is hereby declared to be a lien upon the mortgage upon which such tax is imposed and upon the debt or obligation secured thereby, except that upon mortgages recorded prior to July first, nineteen hundred six, such lien shall extend only to that portion thereof represented by the amount advanced subsequently to such date and to the debt or obligation secured by such advancement, and for the purpose of enforcing the payment of the tax in this article imposed, such mortgage and the debt thereby secured shall be deemed to be property within this state notwithstanding that such mortgage may be owned by or be in the possession of a person or corporation outside the state and a copy thereof duly certified by the recording officer of any county in which such mortgage is recorded shall, for the purpose of enforcing the payment of such tax, be deemed to be, and shall have the same force and effect as the original mortgage and may be sold to satisfy such tax and upon a sale of the whole or any part thereof, shall carry with it and transfer to the purchaser all the rights, interests and obligations of the mortgagee therein named or his assignee or successor in interest in and to such mortgage and the debt secured thereby, or the part thereof to which such lien attaches, together with interest and costs. The lien of the tax resulting from a deed of trust or a deed absolute on its face which is security for a debt or obligation shall cease ten years after the recording thereof, provided such a mortgage is in the hands of a bona fide purchaser for value.

§ 266. Enforcement; procedure. In case the tax imposed by this article is not paid as in this article provided, the tax commission may notify the attorney-general of such failure or refusal to pay and it shall then be the duty of the attorney-general to enforce the payment of such tax, and for that purpose he may maintain an action in the name of the people of the state of New York, in any court of competent jurisdiction, either to sell such mortgage; or, he may maintain an action against the mortgagee or his assignee or successor in interest personally; or, whereby stipulations contained in such mortgage it is made the duty of the mortgagor to pay such tax, or where the mortgagor is liable for the

tax imposed under this article, then against the mortgagor or his successor in interest personally; or, in the case of a trust mortgage against the trust mortgagee, personally; or, he may pursue either, any or all such remedies. All actions instituted by the attorney-general, as herein provided, shall, if the amount involved is fifty dollars or more, be brought in the county of Albany. Where, in any action, a recovery is had there shall be added to the amount of such tax and included in the judgment, interest at the rate of one per centum per month on the amount of such tax, to be computed from the date on which such tax became due and payable, except that in the case of taxable mortgages heretofore recorded and upon which the tax imposed by this article has not been paid, and where, in such case, no penalty is prescribed by law for the nonpayment of such tax, interest shall be added at the rate of six per centum per annum. In any action brought as herein provided, where the judgment provides for the sale of the mortgage, such judgment shall also prescribe the time, place and manner of such sale and of the notice thereof to be given, and, in the discretion of the court, may direct that such sale be made by or under the direction of the comptroller or the recording officer of the county in which such mortgage was first recorded, and all money recovered in such action shall be paid by the attorney-general to the proper recording officer in satisfaction of such tax, and all costs recovered therein shall be paid into the state treasury.

Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

§ 267. Idem.; where recovery is had against trust mortgagee.--In every case where recovery is had personally against a trust mortgagee as herein provided, and payment of the amount recovered has been made by such trust mortgagee, or where such trust mortgagee has voluntarily paid such tax, he shall be deemed to have and possess and to have become subrogated to all the rights and interests in and to the tax lien imposed by section two hundred and sixty-five hereof, and may enforce the repayment of any such sum so paid by him with interest at the rate of six per centum per annum and for that purpose may maintain an action

in his own name in any court in the state having jurisdiction, against any person, association or corporation liable to pay such tax, or for the sale of such mortgage and the debt secured thereby to which such lien attaches.

ARTICLE 12

TAX ON TRANSFERS OF STOCK AND OTHER CORPORATE CERTIFICATES

Section 270. Amount of tax.

270-b. Exemption of certain transfers to legatees and others.

270-c. Transfers by operation of law; special exemptions.

270-d. Tax surcharge.

270-e. Maximum amounts of tax.

271. Stamps, how prepared and sold.

271-a. Sale of stamps.

272. Penalty for failure to pay tax; liability for tax of agent or broker.

273. Canceling stamps; penalty for failure.

274. Contracts for dies; expenses, how paid.

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276. Power of tax commission.

277. Penalties; how recovered.

278. Effect of failure to pay tax.

279. Application of taxes.

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280. Refund of tax erroneously paid.

280-a. Rebate for stock transfer tax paid; penalty for false claims.

281. Statute of limitations not applicable.

281-a. Alternative method of collection.

§ 270. Amount of tax. 1. There is hereby imposed and shall immediately accrue and be collected a tax, as herein provided, on all

sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock, or certificates of rights to stock, or certificates of interest in property or accumulations, or certificates of deposit representing certificates taxable under this article, in any domestic or foreign association, company or corporation, or certificates of interest in business conducted by a trustee or trustees, made after the first day of June, nineteen hundred five, whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to said stock, or other certificates taxable hereunder, or merely with the possession or use thereof for any purpose, or to secure the future payment of money, or the future transfer of any such stock, or certificates. The purchase, redemption or other reacquisition of its own shares by a corporation is subject to tax under this article unless such shares are cancelled on reacquisition pursuant to the provisions of section five hundred fifteen of the business corporation law, or unless within one year of the date of such purchase, redemption or other reacquisition, such shares are cancelled by an appropriate amendment to the corporation's certificate of incorporation or by action of the board of directors of such corporation.

2. Except as otherwise provided by section two hundred seventy-a of this chapter, the tax imposed by this section shall be two and one-half cents for each share, except in cases where the shares or certificates are sold, in which cases the tax shall be at the rate of one and one-quarter cents for each share where the selling price is less than five dollars per share; two and one-half cents for each share where the selling price is five dollars or more per share and less than ten dollars per share; three and three-quarters cents for each share where the selling price is ten dollars or more per share and less than twenty dollars per share and five cents for each share where the selling price is twenty dollars or more per share.

3. It shall be the duty of the person or persons making or

effectuating the sale or transfer, including the person or persons to whom the sale or transfer is made, to pay the tax provided by this article; provided, however, that this subdivision shall not apply to any sale or transfer wherein the vendor or transferor is a governmental entity or international organization which is not subject to the tax.

4. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown only by the books of the association, company, corporation or trustee, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company, corporation or trustee the requisite stamps, and of such association, company, corporation or trustee to affix and cancel the same. Where the transaction is effected by the delivery or transfer of a certificate, the stamp shall be placed upon the surrendered certificate and canceled; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer, a bill or memorandum of such sale to which the stamp provided for by this article shall be affixed and canceled. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock, or other certificate, to which it relates, and the number of shares thereof. All such bills or memoranda of sale shall bear a number upon the face thereof and no more than one such bill or memorandum of sale made by the seller on any given day shall bear the same number. The aforesaid identification number of the bill or memorandum of sale shall in all cases be entered and recorded in the book of account required to be kept by section two hundred seventy-six of this chapter; and no further tax is hereby imposed upon the delivery of the certificate, or upon the actual issue of a new certificate when the original certificate is accompanied by the duly stamped memorandum of sale as herein provided.

5. The tax imposed by this section shall not apply to the following, provided the transaction in each case is accompanied by a certificate setting forth the facts or such other certificate or record as the tax

commission may require:

(a) A sale, agreement to sell, memorandum of sale, or delivery or transfer of shares or certificates of stock or any certificates taxable under this section, made on an organized securities exchange within this state registered with the securities and exchange commission of the United States, of less than one hundred shares and less than the unit of trading on such exchange, by any person, firm, company, association or corporation registered with such exchange, and engaged thereon, as dealer in less than the unit of trading;

(b) An agreement evidencing the deposit of certificates as collateral security, which certificates are not actually sold, or such certificates so deposited, or transfers of such certificates to the person with whom they are deposited as collateral security or to a nominee of such person or from one nominee of such person to another, provided the same continue to be held by such person or nominee or nominees as collateral security as aforesaid, or the retransfer of such certificates to the depositor;

(c) Transfers or deliveries of certificates pursuant to a statutory provision, to a trustee or public officer to secure the performance of obligations, or retransfers or redeliveries of such certificates to the transferer or depositor;

(d) Transfers of certificates from the name of a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary;

(e) Transfers of certificates from the name of the owner thereof to a custodian where the certificates are to be held or disposed of by such custodian for and subject to the instructions of the owner, or from the name of such custodian to the owner by whom the certificates were transferred to such custodian, or from the name of such custodian to a nominee of such custodian, or from one nominee of such custodian to another, provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such custodian, or from the nominee to such custodian;

(f) Mere loans of stock or certificates, or the return thereof;

(g) Deliveries or transfers from the name of the owner to a broker

for sale, or deliveries by or transfers from the name of a broker to a customer for whom and upon whose order he has purchased the same;

(h) Deliveries or transfers of shares or certificates from a corporation to its registered nominee, or from one registered nominee of such corporation to another such nominee, provided the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such corporation, or from such nominee to such corporation.

(i) Transfers or deliveries of shares or certificates upon the instructions of a broker, whether doing business as a corporation, partnership or individually, from his name or from the name of his customer to such broker's registered nominee for the purpose of holding such shares or certificates subject to the instructions of a clearing corporation affiliated with any securities exchange in this state, as agent for such broker, and transfers or deliveries upon the instructions of such clearing corporation from the name of such broker's registered nominee to such broker or customer. For the purposes of this paragraph, the term "broker" shall include any banking corporation or trust company incorporated under the laws of this or another state of the United States and any bank organized under the laws of the United States.

(j) Transfers or deliveries of shares or certificates upon the instructions of a depositor in a system for the central handling of securities (including the clearing and settling of securities transactions) (a) established by a national securities exchange or association registered with the securities and exchange commission of the United States or (b) maintained by a clearing corporation as defined in section 8--102 of the uniform commercial code, from the name of such depositor or his nominee or from the name of his customer or the nominee of such customer to the registered nominee of any such system for the purpose of holding such shares or certificates, as agent for such depositor, and transfers or deliveries upon the instructions of any such depositor from the name of the registered nominee of such system to same depositor, customer or nominee. For the purposes of this paragraph, a "depositor" shall include such securities exchanges or associations, registered under a statute of the United States such as the Securities Exchange Act of 1934 as amended, and their affiliated clearing corporations, such banks, trust companies, investment companies,

insurance companies and other financial organizations as are subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws and such brokers, dealers and investment companies as are registered under the Securities Exchange Act of 1934 as amended, or the Investment Company Act of 1940 as amended, if the foregoing individuals or organizations have been accepted by such system for the central handling of securities as participants therein.

(k) Transfers or deliveries of shares or certificates upon the instructions of a depositor in a system for the central handling of securities as described in paragraph (j) of this subdivision from the name of the nominee of any such system to the name of the nominee of another such system, provided the same continue to be held by the nominee of such other system for the same purpose as previously held for such depositor by the nominee of such other system.

(l) Where the sale, agreement of sale, memorandum of sale, delivery or transfer of a security is effected in a manner which would not otherwise subject such transaction to a tax, the tax shall not apply solely by reason of the receipt or payment of cash in this state as part of a system for the central handling of securities described in paragraph (j) of this subdivision or the making of an accounting, bookkeeping or similar entry in records maintained in this state as part of such system. The tax commission shall prescribe rules and regulations to effectuate the purposes of this paragraph and paragraphs (i), (j) and (k) of this subdivision, and shall have all the rights and powers as set forth in section two hundred seventy-six of this chapter to examine any transactions or records of any nature of such system.

6. The tax imposed by this section shall not apply to shares or certificates of stock, or certificates of rights to stock, or certificates of deposit representing certificates of the character taxed by this article, in any domestic association, company or corporation, even though a record of the transfer is made in the stock book kept in compliance with section ten of the stock corporation law, if the transfer is made upon the books of such association, company or corporation regularly kept at a transfer office or by a transfer agent outside the state, provided the keeping of such books outside the state is necessary or convenient for the transaction of the ordinary business

affairs of such association, company or corporation and is approved by the tax commission, and neither the sale, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this state and no act necessary to effect the transfer (other than the making of a record in the stock book kept in compliance with section ten of the stock corporation law) is done in this state.

7. As used in this section, the term "registered nominee" means any person registered with the tax commission in accordance with such rules and regulations as it shall prescribe.

8. Nothing in this section contained shall be construed to impose a tax upon sales, agreements to sell, memoranda of sales, deliveries or transfers of shares or certificates

(a) issued under a noncorporate investment trust agreement of the fixed type and no such sale, agreement to sell, memorandum of sale, delivery or transfer shall result in imposing a tax under this section on the securities held in such an investment trust; or

(b) of an investment trust between the investment trust and an underwriter, between an underwriter and a dealer in securities or between an underwriter or dealer and an investor. As used in this paragraph, the term "investment trust" means an investment trust of the management type, the shareholders of which are, upon reasonable notice, entitled to require the investment trust to redeem or repurchase their shares or certificates for their proportionate interest in the property of the investment trust, or the cash equivalent thereof, less a discount of not more than three per centum thereof, and the term "underwriter" means a person, firm or corporation who has entered into an agreement with such investment trust to effectuate, alone or through others, sales of shares or certificates of the investment trust.

§ 270-b. Exemption of certain transfers to legatees and others. The tax imposed by sections two hundred seventy and two hundred seventy-a of this chapter shall not be imposed upon any deliveries or transfers by an executor or administrator to a legatee, heir or distributee of shares or certificates of stock if it is shown to the satisfaction of the tax

commission that the value of such shares or certificates is not greater than the amount of the tax that would otherwise be imposed on such delivery or transfer.

§ 270-c. Transfers by operation of law; special exemptions. No transaction taxable under sections two hundred seventy and two hundred seventy-a of this chapter shall be exempt because effected by operation of law. The tax imposed by sections two hundred seventy and two hundred seventy-a of this chapter shall not be imposed upon any delivery or transfer:

1. From a decedent to his executor or administrator;

2. From a minor to his guardian or from a guardian to his ward upon attaining majority;

- § 3. From an incompetent to his committee or similar legal representative, or from a committee or similar legal representative to a former incompetent upon removal of disability;

4. From a conservatee to his conservator, or from a conservator to a former conservatee upon cessation of the conservatorship.

5. From a bank, trust company, financial institution, insurance company, or other similar entity, or nominee, custodian, or trustee therefor, to a public officer or commission, or person designated by such officer or commission or by a court, in the taking over of its assets, in whole or in part, under state or federal law regulating or supervising such institutions, nor upon redelivery or retransfer by any such transferee or successor thereto;

6. From a bankrupt or person in receivership due to insolvency to the trustee in bankruptcy or receiver, from such receiver to such trustee or from such trustee to such receiver, nor upon redelivery or retransfer by any such transferee or successor thereto;

7. From a transferee under paragraphs one to six, inclusive, to his

successor acting in the same capacity, or from one such successor to another;

8. From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country directed pursuant to the authority vested in the president of the United States by section five (b) of the trading with the enemy act (40 Stat. 415), as amended by the first war powers act (55 Stat. 838);

9. From trustees to surviving, substitute, succeeding or additional trustees of the same trust;

10. Upon the death of a joint tenant or tenant by the entirety, to the survivor or survivors.

11. Made in obedience to an order of the Federal Securities and Exchange Commission which has become or becomes final in accordance with law, provided that such order recites that the delivery or transfer is necessary or appropriate to effectuate the provisions of section eleven (b) of the Public Utility Holding Company Act of Nineteen Hundred Thirty-five and specifies and itemizes the securities which are ordered to be delivered or transferred;

12. Made to effectuate any plan of reorganization or adjustment (1) confirmed under the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July first, eighteen hundred ninety-eight, as amended, (2) approved in an equity receivership proceeding in court involving a corporation, or (3) under sections one hundred nineteen to one hundred twenty-three of the real property law or article nine of the stock corporation law.

13. Made to effectuate any plan of reorganization or adjustment required by a decree of the court under the anti-trust laws of the United States or any territory thereof, or of any state or the District of Columbia.

14. Of the capital stock of no more than one corporation organized

under or subject to either articles three or seven of the banking law, delivered or transferred, as provided in section one hundred forty-three-a of the banking law, in exchange for shares or other securities of a company substantially all of the assets of which will consist of said capital stock immediately after such exchange.

The tax commission may require that each such delivery or transfer be accompanied by a certificate setting forth the facts.

§ 270-d. Tax surcharge. 1. In addition to the tax imposed by subdivision one of section two hundred seventy of this article, there is hereby imposed and shall immediately accrue and be collected a like additional tax on all sales, agreements to sell, memoranda of sales and all deliveries or transfers of shares or certificates subject to tax under such subdivision during the period commencing on August first, nineteen hundred seventy-five and ending July thirty-first, nineteen hundred seventy-eight. Such additional tax is at the rate of twenty-five per cent of the rates of tax on sales or transfers under subdivision two of section two hundred seventy and on sales under subdivision one of section two hundred seventy-a and the maximum amount of tax on a single qualifying sale under section two hundred seventy-e of this article. Provided, however, that the tax so calculated shall not be carried out in its computation beyond four decimal points, that is, it shall be computed to the nearest one one-hundredth of one cent.

2. All the provisions of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by subdivision one of section two hundred seventy and expressly increased the rates of tax under subdivision two of section two hundred seventy and subdivision one of section two hundred seventy-a and the maximum amount of tax on a single taxable sale under subdivision two of section two hundred seventy-a and the term "tax" as used in this article shall include the tax imposed by this section as well as the tax imposed by subdivision one of section two hundred seventy and a reference to such tax, subdivision one of section two hundred seventy or section two hundred seventy shall include the tax imposed by this section,

subdivision one of this section and this section, respectively.

§ 270-e. Maximum amounts of tax. 1. Notwithstanding the provisions of section two hundred seventy of this chapter, where any transaction subject to the tax imposed by this article involves a sale which relates to shares or certificates of the same class and issued by the same issuer, the amount of tax upon any such transaction which involves such single qualifying sale shall not exceed the sum of three hundred fifty dollars, provided, however, that such transactions involving sales by any member of a securities exchange or by any registered dealer, who is permitted or required pursuant to any rules and regulations promulgated by the tax commission pursuant to the provisions of section two hundred eighty-one-a of this chapter to pay the taxes imposed by this article without the use of the stamps prescribed by this article, pursuant to one or more orders to sell such shares or certificates placed with the same member of a securities exchange or the same registered dealer on one day, by the same person, each relating to shares or certificates of the same class and issued by the same issuer, all of which sales are executed on the same day (regardless of whether it be the day of the placing of the orders to sell), shall, for the purposes of this subdivision one, be considered to constitute a single qualifying sale.

2. All the provisions of this article shall apply with respect to the maximum amounts of tax provided for by this section to the same extent and in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this section and had expressly referred to the maximum amounts of tax provided for under this section, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant to this section. Provided, further, any reference in this article to the maximum amounts of tax on a single taxable sale under subdivision two of section two hundred seventy-a of this article shall mean the maximum amounts of tax on a single qualifying sale provided for by this section. The term "tax" as used in this article shall include the maximum amounts of tax provided for by this section as well as the taxes imposed by subdivisions one of sections two hundred seventy and

two hundred seventy-d of this article, and a reference to such tax, subdivision one of section two hundred seventy or subdivision two of section two hundred seventy-a shall include the maximum amounts of tax provided for by this section or this subdivision, as the case may be.

§ 271. Stamps, how prepared and sold. Adhesive stamps for the purpose of paying the state tax provided for by this article shall be prepared by the tax commission, in such form, and of such denominations and in such quantities as it may from time to time prescribe, and it shall make provision for the sale of such stamps by its duly authorized agent or agents in such places and at such times as in its judgment may be necessary.

The tax commission may from time to time and as often as it deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. In order to effect such a change and to discontinue the use of stamps of a former design the tax commission shall publish or cause to be published once in each week for each of three months immediately preceding the time for taking effect of such change, in one or more daily newspapers published in each of the first and second class cities of the state, a notice to the effect that after a certain day, which shall be at least three months after the first publication of said notice, none other than the new issue or design of stamps shall be accepted or made use of in payment of the tax provided for by this article. After such date it shall be unlawful for any person to make use of any other than the new issue or design of stamps in payment of such tax. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

Any person lawfully in possession of unused stamps of an old or superseded issue or design may, within ninety days from the time when such change becomes effective as aforesaid, surrender the same to the tax commission together with a sworn statement setting forth the name and address of the owner and party surrendering said stamps, how, when and from whom the same were acquired and such other pertinent information as the tax commission may require; whereupon the tax

commission shall redeem such unused and surrendered stamps by exchanging therefor stamps of a like denomination of the new issue or design. Failure or refusal of the tax commission to redeem the same by such an exchange may be enforced by mandamus.

§ 271-a. Sale of stamps. No person, firm, company, association or corporation other than a corporation organized under the banking law of this state or under the national bank act of the United States, or a duly authorized agent of the tax commission, shall sell or expose for sale, traffic in, trade, barter or exchange any stamp issued pursuant to this article, without first obtaining from the tax commission its written consent to sell, traffic in, trade, barter or exchange such stamps, except that in connection with a sale of or agreement to sell stock a broker or agent of the principal making such sale or agreement to sell may supply and affix the stamp or stamps required by this article. No persons shall sell or expose for sale any stamp so purchased or acquired for a sum less than the face value thereof without the written consent of the tax commission. Any person lawfully in possession of unused stamps of the issue then in effect may request the tax commission for its consent to redeem the same. He shall present to the tax commission, if so required, a sworn statement setting forth the name and address of the owner and the party desiring to redeem said stamps, how, when and from whom the same were acquired and such other pertinent and relevant information as the tax commission may require. Thereupon the tax commission may authorize the redemption of such stamps through its fiscal agent appointed for the sale of stock transfer stamps. Upon the failure or refusal of the tax commission to give such authority the same may be enforced by mandamus. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court.

§ 272. Penalty for failure to pay tax; liability for tax of agent or

broker. 1. Except as provided in subdivision three of this section, any person or persons liable to pay the tax by this article imposed, and any one who acts in the matter as agent or broker for such person or persons, who shall make any sale, transfer or delivery of shares or certificates taxable under this article without paying the tax by this article imposed, and any person who shall in pursuance of any sale, transfer or agreement, deliver any certificate or evidence of the sale or transfer of or agreement to sell any such certificate, or bill or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees, and any association, company, corporation or business conducted by a trustee or trustees, whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books, without having affixed thereto the stamps provided for in this article, and where required by the provisions of this article, a declaration as prescribed by paragraph (c) of subdivision one of section two hundred seventy-a of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months or by both such fine and imprisonment, in the discretion of the court.

2. Any person who acts as agent or broker for a person liable to pay the tax by this article imposed, who shall be subject to or liable for the penalty provided for by subdivision one of this section shall, regardless of whether he has been prosecuted for or acquitted of such criminal liability, in addition to such criminal liability, be liable for the payment of the tax, and such liability may be enforced in the same manner as any liability for tax imposed by this article, and its determination and collection shall be effected pursuant to and subject to the provisions of sections two hundred seventy-nine-a, two hundred seventy-nine-b and two hundred eighty-one of this chapter. The burden, in any hearing held pursuant to such section two hundred seventy-nine-a, of proving the facts to show the absence of liability for the tax imposed by this subdivision upon such agent or broker, shall be upon such agent or broker.

3. The penalties provided by subdivision one of this section shall not apply to any agent or broker or to any other person who shall perform any of the acts set forth in such subdivision, in good faith, in reliance upon a declaration furnished pursuant to paragraph (c) of subdivision one of section two hundred seventy-a of this chapter, as to which declaration such broker, agent or other person, before such act had received no notice of cancellation of such declaration pursuant to the provisions of clause (iii) of subparagraph (2) of such paragraph and has no knowledge or reasonable grounds to believe that the status of such nonresident as a nonresident has changed.

§ 273. Canceling stamps; penalty for failure. In every case where an adhesive stamp shall be used to denote the payment of the tax provided by this article, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp cannot be again used; and if any person makes use of an adhesive stamp to denote the payment of the tax imposed by this article, without so effectually canceling the same, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than two hundred nor more than five hundred dollars or be imprisoned for not less than six months, or both, in the discretion of the court.

§ 274. Contracts for dies; expenses, how paid. The tax commission is hereby directed to make, enter into and execute for and in behalf of the state such contract or contracts for dies, plates and printing necessary for the manufacture of the stamps provided for by this article, and provide such stationery and clerk hire together with such books and blanks as in its discretion may be necessary for putting into operation the provisions of this article; the tax commission shall be the custodian of all stamps, dies, plates or other material or thing furnished by it and used in the manufacture of such state tax stamps, and all expenses incurred by it and under its direction in carrying out

the provisions of this article shall be paid to it by the state treasurer from any moneys appropriated for such purpose.

§ 275. Illegal use of stamps; penalty. Any person who shall willfully remove or alter or knowingly permit to be removed or altered the canceling or defacing marks of any stamp provided for by this article with intent to use such stamp, or who shall knowingly or willfully buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, and any person who shall intentionally remove or cause to be removed or knowingly permit to be removed any stamp, affixed pursuant to the requirements of this article, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than one year, or by both such fine and imprisonment, at the discretion of the court.

§ 275-a. Registration; penalty for failure. Every person acting individually or as a trustee, firm, company, association or corporation engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates taxable under this article, or conducting or transacting a stock brokerage business, and every corporation, stock association, company or trustee which shall maintain a principal office or place of business within the state or which shall keep or cause to be kept within the state of New York a place for the sale, transfer or delivery of its stock, or other certificates included within this article, shall within ten days after the amendment to this section shall take effect if such a certificate shall not have been theretofore filed with the state comptroller, or within ten days after engaging in such business or after establishing such principal office or place of business, or such place for the sale or transfer of its certificates, as the case may be, file in the office of the tax commission a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post office address or addresses of

said person or persons, unless the party so certifying be a corporation or trustee, in which event it shall set forth its said principal office or place of business and when and where incorporated or organized. Said certificate shall be executed and duly acknowledged by the person or persons so conducting or intending to conduct said business or by the president or secretary of the corporation as the case may be.

In the event of a change in the persons composing such firm, company or association or of the persons acting as such trustees or of the address of any such person, firm, company, association, corporation or trustees, or termination of such business or relationship, a like certificate setting forth the facts with respect to such change or termination shall within ten days thereafter be filed in the office of the tax commission.

Any such person acting individually or as a trustee, firm, company, association or corporation who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than one hundred dollars nor more than five hundred dollars or be imprisoned for not more than six months or by both such fine and imprisonment, in the discretion of the court.

§ 276. Power of tax commission. Every person, firm, company, association, corporation or business conducted by a trustee or trustees, engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates taxable under this article, or conducting or transacting a brokerage business, hereinafter in this section called "broker", shall keep or cause to be kept at some accessible place within the state of New York, a just and true book of account, in such form as may be prescribed by the tax commission, wherein shall be plainly and legibly recorded in separate columns (1) unless provided otherwise by rules and regulations of the tax commission, providing for its recording in some other manner in records kept by such broker, the date of receipt of every order for every sale, agreement to sell, delivery or transfer of such shares or certificates together with the name, class and number of shares to which

such order relates and the name and address (or other identification which refers to records kept by such broker containing such name and address) of the person placing the order; (2) the date of making every sale, agreement to sell, delivery or transfer of such shares or certificates, the name and the number of shares thereof, the selling price, the date of the order or orders to which such transaction relates; (3) the name and address (or other identification which refers to records kept by such broker, containing such name and address) of the seller or transferrer, and his resident or nonresident status, as defined in the provisions of section two hundred seventy-a of this chapter; (4) the name of the purchaser or transferee; (5) the face value of the adhesive stamps affixed; and (6) the identifying number of the bill or memorandum of sale used as provided for by section two hundred and seventy of this chapter. This book shall also have recorded therein each separate purchase of stock transfer stamps, showing the date, the amount and from whom purchased.

Every association, company or corporation or business conducted by a trustee or trustees shall keep or cause to be kept at some accessible place within the state of New York a stock certificate book and a just and true book of account, transfer ledger or register, in such form as may be prescribed by the tax commission, wherein shall be plainly and legibly recorded in separate columns, the date of making every transfer of stock, or other certificates included within this article, the name and number of shares thereof, the serial number of each surrendered certificate, the name of the parties surrendering such certificate, the serial number of the certificate issued in exchange therefor, the number of shares covered by said certificate, the name of the party to whom said certificate was issued and the face value of the stamps attached in payment of the tax on the transfer of the certificate. Evidence of the payment of the tax provided for by sections two hundred and seventy and two hundred and seventy-a of this chapter shall be provided in one of the following manners and not otherwise, to wit:

(a) By attaching to the certificate surrendered for transfer, the stamps required for and any declaration permitted by paragraph (c) of subdivision one of section two hundred seventy-a of this chapter with respect to such transfer, or

(b) If the stamps and any such declaration are not attached to the certificate, but are attached to the bill or memorandum of sale effecting or evidencing the transfer of such certificate, by attaching to said certificate the said bill or memorandum of sale with stamps and declaration, if any, attached, or

(c) If the stamps and declaration, if any, covering the transfer are attached to a bill or memorandum effecting a transfer of one or more certificates or to one or more certificates included in said transfer, a notation must be made upon such certificates, bill or memorandum, as the case may be, clearly specifying and identifying the certificate or certificates to the sale or transfer of which the said stamps and declaration apply, or

(d) If the bill or memorandum bearing such stamps and declaration is not attached to the surrendered certificate or certificates to which it applies, a notation must be made upon such bill or memorandum stating the serial number or numbers of the certificates to which said bill or memorandum applies, as provided by section two hundred and seventy of this chapter. It shall also retain and keep all surrendered or canceled shares or certificates and all memoranda and any declarations relating to the sale or transfer of any thereof. All such books of account, transfer ledgers, registers and certificate books, shall be retained and kept as aforesaid for a period of at least four years subsequent to the date of the last entry made therein as herein required; and all such surrendered or canceled shares or certificates, memoranda and declarations relating to the sale or transfer of shares or certificates taxable under this article, shall be retained and kept for a period of at least four years from the date of the delivery thereof. For the purpose of ascertaining whether the tax imposed by this article has been paid, all such books of account, transfer ledgers, registers, certificate books, surrendered or canceled shares or certificates and memoranda and declarations relating to the sale or transfer thereof, shall at all times between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, except Saturdays, Sundays and legal holidays, be open to examination by the tax commission or its duly authorized representative. The tax commission may consent to the destruction of all surrendered or canceled shares or certificates and all memoranda and any declarations relating to the sale or transfer

thereof provided the tax commission has completed an examination with respect to the transactions to which such documents relate, is satisfied that the original of such documents no longer need be preserved, a record of such documents is recorded, copied or reproduced by any process which accurately reproduces or forms a durable medium for reproducing the original and such record is retained for the remainder of the applicable four year period specified above and is open to examination by the tax commission on the days and during the hours set forth above.

The tax commission by a special proceeding in the supreme court may enforce its right to examine such books of account, bills or memoranda of sale or transfer, transfer ledger, register and certificate books and surrendered or canceled shares or certificates and declarations or a record of such shares or certificates and all memoranda and any declarations relating to the sale or transfer thereof recorded, copied or reproduced as herein provided. If the tax commission ascertains that the tax provided for in this article has not been paid, the attorney general, at the instance of the commission, shall bring an action in its name as such tax commission, in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provisions of this article.

Every person, firm, company, association or corporation or business conducted by a trustee or trustees that shall fail to keep such book of account or bills of memoranda of sale or transfer, or transfer ledger, register or certificate book or surrendered or canceled shares or certificates or declarations as herein required, or who alters, cancels, obliterates or destroys any part of said records, except as herein permitted, or makes any false entry therein, or who shall refuse to permit the tax commission or any of its authorized representatives freely to examine any of said books, records or papers at any of the times herein provided, or who shall in any other respect violate any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall for each and every such offense pay a fine of not less than five hundred dollars nor more than five thousand dollars, or be imprisoned not less than three months nor more than one

year, or both in the discretion of the court.

§ 277. Penalties; how recovered. Any person, firm, company, association or corporation, or business conducted by a trustee or trustees that shall violate any of the provisions of section two hundred seventy, section two hundred seventy-a or section two hundred seventy-two of this chapter shall, in addition to the other penalties provided for in this article, be subject to a penalty of one dollar for each and every share of stock or of other interest taxable under this article so sold or transferred, or transferred or entered upon the books of the corporation or trustees, as the case may be, without the payment of the tax by this article imposed thereon. Such penalty may be compromised by the tax commission. Any person who shall violate any of the other provisions of this article shall, in addition to the other penalties provided for in this article, be subject to a penalty of five hundred dollars for each and every such violation.

The attorney-general at the instance of the tax commission shall bring an action in its name as such tax commission in any court of competent jurisdiction for the recovery of any penalty imposed by this section. All moneys collected as penalties shall be paid into the stock transfer tax fund. In an action against a corporation or trustees, or its or their transfer agent to recover a penalty because of the transfer of a certificate, upon the books or records of the corporation or trustees without requiring the payment of the tax by this article imposed, the failure of the corporation or trustees or its or their transfer agent, on the demand of the tax commission or its duly authorized representative, to produce the surrendered certificate or memoranda of sale with the required stamps and any declaration prescribed by paragraph (c) of subdivision one of section two hundred seventy-a of this chapter, if required, attached, shall constitute prima facie proof of the nonpayment of the taxes imposed by section two hundred seventy and section two hundred seventy-a of this chapter.

§ 278. Effect of failure to pay tax. No transfer of certificates

taxable under this article made after June first, nineteen hundred and five, on which a tax is imposed by this article, and which tax is not paid at the time of such transfer shall be made the basis of any action or legal proceedings, nor, except in a proceeding under articles ten-c and twenty-six of this chapter, shall proof thereof be offered or received in evidence in any court in this state.

§ 279. Application of taxes. The taxes imposed under this article and the revenues thereof, after the deduction of refunds of taxes erroneously paid, shall be paid by the tax commission into the stock transfer tax fund to the credit of the commissioner of taxation and finance.

§ 279-a. Determination of tax. If any person fails to pay any tax required by this article, the commissioner of taxation and finance shall determine the amount of tax due at any time within five years after the tax became payable and shall give written notice of such determination to the person or persons liable therefor. Notwithstanding any of the foregoing provisions of this section, where, before the expiration of the time prescribed in this section for the determination of tax, both the commissioner of taxation and finance and the taxpayer have consented in writing to its determination after such time, the tax may be determined at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Such a determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall within thirty days after the mailing of notice of such determination petition the division of tax appeals for a hearing. After such hearing the division of tax appeals shall give written notice of the determination of the administrative law judge to the person against whom the tax was assessed and to the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter but the

proceeding may not be commenced unless the amount of tax stated in the determination with penalties thereon, if any, shall have first been deposited with the commissioner of taxation and finance and an undertaking filed with him in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if the proceeding be dismissed or the determination confirmed the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding or at the option of the petitioner such undertaking may be in a sum sufficient to cover the tax, penalties, costs and charges aforesaid in which event the petitioner shall not be required to pay such tax and penalties as a condition precedent to the commencement of the proceeding. The remedy provided by this section for a review of the decision of the tax appeals tribunal shall be the exclusive remedy available to judicially determine the liability for taxes under this article.

§ 279-b. Warrant for the collection of taxes. Whenever any person shall fail to pay any tax he is required to pay under the provisions of this article, the tax commission may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such person, found within his county, for the payment of the amount thereof, with the penalties, interest and the cost of executing the warrant, and to return such warrant to the tax commission and to pay to it the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the person mentioned in the warrant, and the amount of the tax and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom the warrant is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued

against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the tax commission shall have the same remedies to enforce the claim for taxes against the person as if the people of the state had recovered judgment against such person for the amount of the tax.

§ 280. Refund of tax erroneously paid. If any stamp or stamps shall have been erroneously affixed to any book, certificate, or bill or memorandum of sale, or if any tax provided by this article shall be erroneously paid otherwise than by the use of a stamp or stamps, the tax commission may, upon presentation of a claim for the amount of such stamp or stamps, or tax, and upon the production of evidence satisfactory to it that such stamp or stamps was or were so erroneously affixed, or such tax was so erroneously paid, so as to cause loss to the person or persons making such claim, pay such amount or such part thereof as it may allow, to such claimant out of any moneys collected under this article. Provided, however, that where such erroneous payment was made otherwise than by the use of stamps pursuant to the provisions of section two hundred eighty-one-a hereof, and resulted from payment of tax in excess of the amount due under subdivision two of section two hundred seventy-a of this chapter in lieu of the presentation of a claim for refund an adjustment for such erroneous payment may be made on the written report required to be made to the exchange, affiliated clearing corporation or authorized agency if such adjustment is made on such a written report filed within thirty business days following such erroneous payment, in such form and with such substantiating evidence as the tax commission may prescribe and provided further that at the time of the making of such adjustment the person, firm, company or association making such report has either paid to the person or persons

erroneously charged with such tax the amount of such overpayment or has applied such amount in reduction of any amount owing to it from the person or persons so charged. Any claim for refund shall be presented to the tax commission in writing, duly verified, and shall state the full name and address of the claimant, the date of such erroneous affixing, or other payment of the tax, the face value of such stamp or stamps, or the amount of such tax, as the case may be, and contain such evidence as may be available upon which the demand for such refund is based. If the claim is based on the erroneous affixing of a stamp or stamps the claim shall describe the instrument to which the stamp or stamps were affixed. Such claims shall be presented within two years after such erroneous affixing or payment, as the case may be, except if an agreement under the provisions of section two hundred seventy-nine-a (extending the period for determination of tax imposed by this article) is made within the two-year period for the filing of a claim for refund provided for in this section, the period for filing a claim for refund shall not expire prior to six months after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof. The tax commission shall grant or deny such claim in whole or in part and shall notify the claimant by mail of its determination. Such determination shall be final and irrevocable unless the claimant shall within thirty days after the mailing of notice of such determination apply to the tax commission for a hearing. After such hearing the tax commission shall mail notice of its decision to the claimant. The decision of the tax commission may be reviewed under article seventy-eight of the civil practice law and rules if a proceeding under that article is commenced within ninety days after the mailing of the notice of such decision. However, such a proceeding may not be commenced unless an undertaking is filed with the tax commission in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if the proceeding be dismissed or the decision confirmed the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding. The remedy provided by this section for review of the decision of the tax commission shall be the exclusive remedy available to judicially determine the liability for taxes under this article.

§ 280-a. Rebate for stock transfer tax paid; penalty for false claims.

1. Except as otherwise provided in subdivision fifteen of this section, where a tax shall have been paid under this article a portion of the amount paid shall be allowed as a rebate and such portion shall be paid to the taxpayer but only to the extent that moneys are available for the payment of such rebates in the stock transfer incentive fund established pursuant to section ninety-two-i of the state finance law. The portion of the amount of tax paid which is to be allowed as a rebate shall be thirty percent of the tax incurred and paid on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty and sixty percent of the tax incurred and paid on such transactions occurring on and after October first, nineteen hundred eighty and on or before September thirtieth, nineteen hundred eighty-one and all of the amount of tax incurred and paid shall be allowed as a rebate on transactions subject to the stock transfer tax occurring on and after October first, nineteen hundred eighty-one.

2. Notwithstanding the provisions of subdivision one of this section with respect to the percentages of tax allowable as rebates, the portion of the amount of stock transfer tax paid which is to be allowed as a rebate to a nonresident shall be fifty percent of the tax incurred and paid on transactions subject to stock transfer tax occurring on and after October first, nineteen hundred seventy-seven and on or before July thirty-first, nineteen hundred seventy-eight and thirty-seven and one-half percent with respect to such transactions occurring on and after August first, nineteen hundred seventy-eight and on or before September thirtieth, nineteen hundred eighty, and thereafter the portions set forth in subdivision one of this section shall be applicable.

2-a. In addition to the rebate allowable under the provisions of subdivision one of this section, the portion of the amount of stock transfer tax paid which is to be allowed as a rebate to any person, firm, company or corporation registered with the United States securities and exchange commission in accordance with subsection (b) of

section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in paragraph (e) of subdivision twelve of this section, other than such a person, firm, company or corporation liable to file a report or return under article nine-A of this chapter, or article twenty-three of this chapter, (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two), shall be one hundred percent of the stock transfer tax incurred and paid on transactions subject to the stock transfer tax executed by such person, firm, company or corporation pursuant to the acceptance of an order placed through an intermarket linkage system developed pursuant to subsection (a) of section eleven-A of such securities exchange act under a plan submitted by one or more national securities exchanges or national securities associations registered with such securities and exchange commission occurring on and after April seventeenth, nineteen hundred seventy-eight and on or before September thirtieth, nineteen hundred seventy-nine, seventy percent of the tax incurred and paid on such a transaction occurring on and after October first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty and forty percent of the tax incurred and paid on such a transaction occurring on and after October first, nineteen hundred eighty and on or before September thirtieth, nineteen hundred eighty-one. Notwithstanding any other provision of law, the net amount to be rebated to any such person, firm, company or corporation under this subdivision with respect to stock transfer tax allowable as rebates during each of the periods ending on September thirtieth hereinbefore set forth shall not be allowed or paid prior to the first day of the eighth month following September thirtieth of each of such periods nor until the subsequent date on which the commissioner of taxation and finance shall next determine the amount allowable as rebates pursuant to the provisions of section ninety-two-i of the state finance law, provided, however, that the net amount to be allowed for the April seventeenth, nineteen hundred seventy-eight through September thirtieth, nineteen hundred seventy-eight period shall not be allowed or paid until the last business day of June, nineteen hundred seventy-nine.

No rebate shall be allowed under this subdivision with respect to any stock transfer tax incurred in a market making transaction occurring on

or after October first, nineteen hundred eighty-one. No rebate shall be allowed or paid under this subdivision for stock transfer tax paid pursuant to section two hundred seventy-nine-a of this chapter nor shall any rebate be allowed or paid until the person, firm, company or corporation claiming the rebate complies with the rules, regulations and instructions of the state tax commission issued under this article including furnishing of a just and true book of account within the state as may be required by the state tax commission.

3. Except as provided in subdivision six of this section, rebates may be paid only upon the filing of a claim for rebate with the state tax commission. All claims for rebate shall be presented in such form and contain such information as the state tax commission, by rule, regulation or instruction, shall prescribe and shall be presented within two years after the affixing and cancelling of stock transfer tax stamps or payment of the tax otherwise than by the use of stamps.

4. Every such claim shall include a certificate by or on behalf of the party presenting the same to the effect that it is just, true and correct, that the amount of stock transfer tax stated thereon has been paid to the state and that the amount of rebate requested is actually due and owing. The state tax commission, if satisfied that the tax has actually been paid, shall rebate the same in accordance with the provisions of this section on the audit and warrant of the state comptroller on vouchers approved by the commissioner of taxation and finance.

5. The state tax commission shall grant or deny such claim in the manner provided in section two hundred eighty of this article and the remaining provisions of such section, relating to determination of tax, hearing, decision of the state tax commission, the exclusive manner of review of such decision, and the requirement of an undertaking, shall apply to the provisions of this section with the same force and effect as if the language of such section had been incorporated in full into this section and had expressly referred to the rebate under this section, except to the extent that any such provision is either inconsistent with or not relevant to this section. All of the other

provisions of this article relating to refunds shall apply to the rebate of tax provided for by this section in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this section and had expressly referred to the rebates of tax provided for under this section, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant to this section and except that the term "refund" as used in such provisions shall be read as "rebate".

6. (a) Notwithstanding the provisions of section two hundred eighty-one-a of this chapter, the tax imposed by this article may be paid, and rebates provided for in subdivisions one and two of this section shall be allowed without the filing of the claim required by subdivision three of this section, in the manner and upon the filing of the report referred to in paragraph (b) of this subdivision in the case where payment of the tax imposed by this article is made by any member of any securities exchange or any registered dealer who or which is permitted or required pursuant to the provisions of such section two hundred eighty-one-a of this chapter to pay such tax without the use of the stamps prescribed by this article.

(b) On the written report required to be made to or through a securities exchange located within this state, affiliated clearing corporation or to a qualified securities exchange, qualified clearing corporation, authorized agency or the tax commission by each such member or dealer under such section two hundred eighty-one-a, there shall also be shown the amount of the rebate of tax shown to be due thereon, which would be allowable by this section if the full amount of tax is paid with such report. The net amount required to be paid for the account of the tax commission to or through such exchange located within this state, affiliated clearing corporation or to such authorized agency and remitted to the tax commission pursuant to such section or such amount required to be paid to the tax commission shall be the amount of tax shown to be due on such written report (determined without regard to any rebate allowable under this section) less the amount of any such rebate, subject to the provisions of subdivision eight of this section. Notwithstanding the provisions of section two hundred eighty-one-a of this article, on the next-to-the-last business day of the department of

taxation and finance in each of the months of September, December, March and June, each such member or dealer shall show on such report the aggregate amount of rebates shown daily on such report for the period of three full months ending on such next-to-the-last business day. On the last business day of each of such months, an amount equal to such aggregate amount shall be paid by such member or dealer for the account of the tax commission to or through such exchange located within this state, affiliated clearing corporation or authorized agency and remitted by such exchange, affiliated clearing corporation or authorized agency to the tax commission by separate check or wire transfer. The amount so remitted shall constitute the total amount of rebates provided in subdivisions one and two of this section payable in the manner described in this subdivision, which amount shall be included in the amount required to be paid from the stock transfer tax fund into the stock transfer incentive fund on each such last day pursuant to sections ninety-two-b and ninety-two-i of the state finance law; provided, however, that if such exchange located within this state, affiliated clearing corporation, qualified securities exchange, qualified clearing corporation or authorized agency shall determine that the payment by any member or dealer of any tax imposed by this article will be jeopardized by delay, it shall forthwith notify the tax commission of such condition, or if the tax commission believes that the collection of any tax will be jeopardized by delay, it may determine the amount of such tax and assess the same against any such member or dealer prior to the filing of his report and prior to the date when his report is required to be made to an exchange located within this state, affiliated clearing corporation, qualified securities exchange, qualified clearing corporation or authorized agency. The amount so determined shall become due and payable to the tax commission by the member or dealer against whom such a jeopardy assessment is made, as soon as notice thereof is given to him personally or by registered or certified mail. The provisions of section two hundred seventy-nine-a shall apply to any such determination except to the extent that they may be inconsistent with the provisions of this subdivision. The tax commission may abate any jeopardy assessment if it finds that jeopardy does not exist. The collection of any jeopardy assessment may be stayed by filing with the tax commission a bond issued by a surety company authorized to transact

business in this state and approved by the superintendent of financial services as to solvency and responsibility, conditioned upon payment of the amount assessed, or any lesser amount to which such assessment may be reduced by the tax commission or by a proceeding under article seventy-eight of the civil practice law and rules as provided in section two hundred seventy-nine-a of this chapter such payment to be made when the assessment or any such reduction thereof shall have become final and not subject to further review. If such a bond is filed and thereafter a proceeding under article seventy-eight of the civil practice law and rules is commenced as provided in section two hundred seventy-nine-a, deposit of the taxes assessed shall not be required as a condition precedent to the commencement of such proceeding. Where a jeopardy assessment is made, any property seized for the collection of the tax shall not be sold (i) until expiration of the time to apply for a hearing as provided in such section, and (ii) if such application is timely filed, until the expiration of ninety days after the tax commission mailed notice of its determination to the person against whom the assessment is made; provided, however, such property may be sold at any time if such person has failed to attend a hearing of which he has been duly notified, or if he consents to the sale, or if the tax commission determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable. The amount of any and all rebates of the tax imposed by this article paid pursuant to this paragraph shall be credited or caused to be credited by such exchange located within this state, affiliated clearing corporation, qualified securities exchange, qualified clearing corporation or authorized agency to or for the benefit of the taxpayer incurring liability for such tax.

(c) If a rebate is paid in the manner provided in this subdivision, no further rebate shall be allowable but any stock transfer tax paid to a member or dealer by a taxpayer otherwise entitled to rebate under this section shall be paid by such member or dealer to the taxpayer.

(d) The amounts of the rebates provided for under subdivisions one and two of this section paid in the manner provided in this subdivision shall be shown separately on all reports prescribed by the tax commission under such section and shall be evidenced by such certification as the tax commission may prescribe.

(e) The tax commission may require any such member or registered dealer to file with the department of taxation and finance a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in the state, in such amount as the tax commission may fix, to secure the payment of any taxes due from such member or dealer pursuant to section two hundred eighty-one-a. The tax commission may require that such a bond be filed before any tax due under this article from any such member or dealer may be reported and paid under the provisions of this subdivision, or at any time when in its judgment the same is necessary as a protection to the revenues under this article. In lieu of such bond, such member or dealer may deposit securities approved by the tax commission, in such amount as it may prescribe, which securities shall be kept in the joint custody of the comptroller and the commissioner of taxation and finance and may be sold by the tax commission if it becomes necessary so to do in order to recover any sums due from such person pursuant to this article; but no such sale shall be held until after such person shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article, shall be returned to such member or dealer.

7. If the commissioner of taxation and finance makes the determination that rebates payable exceed moneys available in the stock transfer incentive fund for paying such rebates and if any member or dealer shall advance and pay the amount of tax, imposed by this article without taking account of rebates, either for himself or for which any other taxpayer is entitled to claim a rebate pursuant to the provisions of subdivision six of this section, such member or dealer shall be entitled to a rebate for the amount of such tax advanced and paid by him on behalf of such other taxpayer in the amount of the rebate allowable to such taxpayer and in the amount of the rebate allowable to himself whenever such commissioner determines that sufficient funds are available in the stock transfer incentive fund for paying such rebate.

8. The amount of any erroneous or excessive rebate paid or allowed under this section may be determined by the state tax commission and may

be recovered from such claimant in the same manner as a tax imposed under this article, provided, however, that any such determination shall be made within five years after the date of such erroneous or excessive rebate.

9. Any taxpayer, broker or dealer who or which files or causes to be filed any claim for or report of rebate permitted or required under this article which is willfully false shall be guilty of a felony.

10. If any part of any claim for or report of rebate of stock transfer tax is false or fraudulent, any person who files such claim or makes such report shall, in addition to any other penalties provided by this article, be subject to a penalty of five hundred dollars for each and every violation. The state tax commission may determine the amount of any such penalty to be due from any such person in the same manner as the tax imposed by this article, provided, however, that any such determination shall be made at any time.

11. The state tax commission shall make rules and regulations and issue instructions to effectuate the purposes of this section and to provide for payments to and from and administration of the stock transfer tax fund and the stock transfer incentive fund and shall have all the rights and powers as set forth in section two hundred seventy-six of this article to examine transactions and require records to be kept and declarations and certifications to be made and kept as may be required for such purposes. If any member or dealer described in subdivision six of this section shall violate any provision of this section or any reasonable rule, regulation or instruction made or issued pursuant thereto, such member or dealer may upon notice thereof thereafter be denied rebates by the state tax commission in accordance with rules and regulations promulgated by such commission. Provided, that nothing herein shall limit the right to file a claim for rebate under this section.

12. For the purposes of this section the following terms shall have the following meanings:

(a) A "nonresident" shall mean an individual or group of individuals

jointly owning securities (but including partnerships only if organized and operating solely for the purpose of investing in securities) selling or trading or delivering or transferring on his or their own account, who is not, or no one of whom is, a resident.

(b) A "resident" means an individual who on the day upon which the tax imposed by section two hundred seventy of this chapter accrues,

(1) regardless of where he resides or is domiciled, (i) is a member of a securities exchange within this state which is registered with the securities and exchange commission of the United States; (ii) is a dealer in securities required to be registered with the attorney general of the state of New York; (iii) acts as a dealer in securities or as a broker or agent in transactions concerned with the sale, purchase, delivery or transfer of securities; or (iv) is a member of or a person employed in a managerial capacity by a firm, company, association or organization, or an officer or director of or a person employed in a managerial capacity by a corporation, which is a member organization of a securities exchange, a dealer in securities, or a dealer, broker or agent, described in clause (i), (ii) or (iii) of this subparagraph, or

(2) is domiciled in this state, unless on such day he maintained no permanent place of abode in this state, maintained a permanent place of abode elsewhere and during the one year period ending on such day spent in the aggregate, not more than thirty days of such period in this state, or

(3) is not domiciled in this state, but on such day maintained in this state, a permanent place of abode unless such abode is due solely to such individual's being in the armed forces of the United States, or

(4) regardless of where he resides, maintains a permanent place of business within this state or is employed within this state.

(c) No transaction shall be deemed to be a nonresident transaction and entitled to the rebate payable or allowable in subdivision two unless

(1) the papers or documents upon or to which are required to be placed or affixed the stamps required by subdivision four of section two hundred seventy of this chapter, to denote the payment of the proper amount of the tax imposed by such section to the state tax commission, have also affixed thereto or placed thereon a declaration in the form prescribed by the tax commission signed by the person making the sale or transfer, setting forth facts to show that the transaction is made by a

nonresident; or (2) in the case of transactions executed or effected within this state (or transactions executed or effected outside this state but subject to the tax imposed by this article) by any member or member organization of any securities exchange located within this state or of any qualified securities exchange which is registered with the securities and exchange commission of the United States (hereinafter in this section referred to as a "member of a securities exchange") or by any person, firm, corporation, company or association required to be registered with the attorney general of the state of New York as a dealer in securities other than upon any such exchange (hereinafter in this section referred to as a "registered dealer"), who is permitted or required pursuant to any rules and regulations promulgated by the tax commission pursuant to the provisions of section two hundred eighty-one-a of this chapter, to pay the tax imposed by this article without the use of the stamps prescribed by this article, the transaction is certified, in such form as the tax commission may prescribe, in the report required to be made to or through such exchange located within this state, or its affiliated clearing corporation or to a qualified securities exchange, qualified clearing corporation or any authorized agency by rules and regulations promulgated by the tax commission pursuant to section two hundred eighty-one-a of this chapter, as being a transaction by a nonresident. The certification in such report may be made by such member of a securities exchange or registered dealer if he either (i) has obtained from such nonresident a declaration in the form prescribed by the tax commission, or (ii) has met requirements set forth in rules and regulations promulgated by the tax commission establishing that the transaction is made by a nonresident and (iii) has not, on or after the date of obtaining such declaration or its delivery and filing, received from such nonresident either a notice of cancellation, in the form prescribed in clause (iii) of subparagraph two of paragraph (d) of this subdivision, or has no knowledge or reasonable grounds to believe that the status of such nonresident as a nonresident has changed.

(d) (1) Any person who shall knowingly make any false statement in a declaration provided for by paragraph (c) of this subdivision shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars,

or be imprisoned for not more than one year, or be subject to both such fine and imprisonment, in the discretion of the court.

(2) Any person who--

(i) having executed, filed with and delivered to a member of a securities exchange or a registered dealer a declaration provided for by paragraph (c) of this subdivision;

(ii) thereafter ceases knowingly to be a nonresident;

(iii) fails to execute, file and deliver a notice of cancellation of such declaration, with and to such member or dealer; and

(iv) after ceasing to be such a nonresident and prior to the execution, filing and delivery of such notice of cancellation, with intent to cause a rebate to be made from the stock transfer incentive fund in excess of the rebate allowable to residents under subdivision one of this section, places and allows to be executed an order with such member or dealer where the sale, agreement to sell, memorandum of sale, delivery or transfer of any shares or certificates described in section two hundred seventy of this chapter is subject to the taxes imposed by this chapter; shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than one year, or be subject to both such fine and imprisonment, in the discretion of the court.

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

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

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

(3) to offset a transaction made in error.

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

13. The state tax commission may provide that where a declaration has been executed, filed and delivered to a member of a securities exchange or a registered dealer under subdivision one of section two hundred seventy-a of this article and kept by such member or dealer pursuant to rules, regulations and instructions of the state tax commission, such declaration shall constitute the declaration of the nonresident under subdivision twelve of this section.

14. Where there has been a determination of the maximum amount of tax on a single qualifying sale under section two hundred seventy-e of this chapter, the foregoing provisions of this section shall not apply to such a single qualifying sale until October first, nineteen hundred seventy-nine and thereafter, provided, however, for the period beginning October first, nineteen hundred seventy-nine and ending September thirtieth, nineteen hundred eighty, the portion of the maximum amount of tax to be rebated on such single qualifying sale shall not exceed thirty percent.

15. (a) For the purpose of allowing the rebate authorized by this section to a taxpayer, other than a taxpayer regarding which subdivision six of this section is applicable, any person liable for the tax imposed by this article who or which purchases stamps issued to denote the payment of the tax imposed by this article or any agent of a taxpayer who purchases such stamps, provided such purchase was made from a fiscal agent appointed for the sale of such stamps, may claim the rebate authorized by subdivision one of this section by filing a claim in such form and containing such information as the state tax commission, by rule, regulation or instruction shall prescribe, but all such claims under this subdivision shall be presented within two years after the purchase of such stamps, provided, however, all such claims must be accompanied by the receipt for the purchase of stamps in the form

approved by the tax commission. The tax commission, if satisfied that the moneys from the purchase of such stamps have been paid from the stock transfer tax fund into the stock transfer incentive fund, shall rebate the same to the person or agent who or which purchased such stamps from such fund. All of the other provisions of this section regarding rebates shall apply to the method of rebate of tax provided for by this subdivision in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this subdivision and had expressly referred to the claim for rebate of tax provided for by this subdivision, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant to this subdivision.

(b) If a rebate is paid in the manner provided in this subdivision, no further rebate shall be allowable under this section but any stock transfer tax paid by a taxpayer otherwise entitled to rebate under this section shall be paid to such taxpayer by the claimant under this subdivision.

(c) If a rebate is paid in the manner provided by this subdivision, any refund or redemption allowable by this article shall be reduced by the amount of rebate allowed and paid pursuant to this subdivision, any other provision of this article to the contrary notwithstanding.

(d) The state tax commission shall have all the rights and powers as set forth in section two hundred seventy-six of this article to examine transactions and require records to be kept by claimant under this subdivision as if such claimant was a person required to comply with the provisions of such section two hundred seventy-six.

(e) If any person liable for the tax or any agent of the taxpayer shall violate any provision of this subdivision or any reasonable rule, regulation or instruction made or issued pursuant thereto, such person or agent may upon notice thereof thereafter be denied rebates under this subdivision by the state tax commission in accordance with rules and regulations promulgated by such commission. Provided, that nothing herein shall limit the right to file a claim for rebate under subdivision three of this section.

(f) If the commissioner of taxation and finance makes the determination that rebates payable exceed moneys available in the stock transfer incentive fund for paying such rebates and if any person liable

for the tax imposed by this article or any agent of the taxpayer shall have purchased stamps to pay the amount of tax imposed by this article without charging the taxpayer or principal for the amount of the rebatable portion of the cost of such stamps allowable to such taxpayer or principal at the time of purchase of such stamps, such person liable for the tax or such agent shall be entitled to a rebate for such rebatable portion of such tax advanced and paid by him on behalf of such other taxpayer in the amount of the rebate allowable to such taxpayer and in the amount of any rebate allowable to himself whenever such commissioner determines that sufficient funds are available in the stock transfer incentive fund for paying such rebate.

§ 281. Statute of limitations not applicable. The provisions of the civil practice law and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, determine or enforce the collection of any tax or penalty prescribed by this article, provided, however, that no such proceeding or action shall be commenced after the expiration of ten years after a tax became due or a penalty incurred, except that such proceeding or action may be commenced at any time if the failure to pay the tax or penalty was with intent, in any manner, to defeat or evade the same.

§ 281-a. Alternative method of collection. 1. Notwithstanding any other provisions of this article, the tax commission may by rules, regulations or instructions provide that the taxes imposed by this article on any sale, delivery or transfer executed or effected within this state by any member of any securities exchange located within this state which is registered with the securities and exchange commission of the United States or by any member of a qualified securities exchange shall be paid to or through such exchange located within this state or in the discretion of the tax commission to or through its affiliated clearing corporation by the person, firm, company or association executing or effecting the sale, delivery or transfer, without the use of the stamps prescribed by this article; provided that if such taxes are paid through such exchange located within this state or through an

affiliated clearing corporation, payment by any member of a qualified securities exchange shall be made to a qualified securities exchange or a qualified clearing corporation which has agreed to abide by the rules, regulations and instructions of the state tax commission and which the commission has authorized to accept payment and any such qualified securities exchange or qualified clearing corporation shall pay such taxes to such exchange located within this state or its affiliated clearing corporation. The taxes imposed by this article on any sale or transfer executed or effected within this state by any person, firm, corporation, company or association required to be registered with the attorney general of the state of New York as a dealer in securities, other than upon any such exchange, may also be paid without the use of the stamps prescribed by this article, under such rules and regulations as the tax commission may prescribe, to any agency duly authorized by the tax commission or to the tax commission, by the person, firm, company, corporation or association executing or effecting such sale or transfer without the use of the stamps prescribed by this article. In such event, a written report shall be made to such exchange located within this state, affiliated clearing corporation, authorized agency or the tax commission for each business day or such period as the tax commission may prescribe, by each such person, corporation, firm, company or association showing the amount of tax payable on all transactions taxable under this article and such other reasonable information as the tax commission may prescribe, provided, however, that if such taxes are paid through such exchange located within this state or its affiliated clearing corporation by a member of a qualified securities exchange, such written report shall be made to the qualified securities exchange or qualified clearing corporation, and such qualified securities exchange or qualified clearing corporation shall render a report to such exchange located within this state or its affiliated clearing corporation through which such taxes are paid showing the amount of tax payable on all transactions taxable under this article and such other reasonable information as the tax commission may prescribe. Such reports shall be preserved for such period as the tax commission may prescribe. At the time of making such reports, the amount of tax shown to be due thereon shall be paid to the tax commission or for the account of the tax commission to or through such

exchange located within this state, affiliated clearing corporation or authorized agency and shall be remitted daily, unless otherwise prescribed by the tax commission, by such exchange, affiliated clearing corporation or authorized agency to the tax commission together with a report in such form as may be prescribed by the tax commission. The payment of the tax to or through an exchange, affiliated clearing corporation, authorized agency or the tax commission on each transaction as hereinbefore provided shall be evidenced by a certification in such form and manner as the tax commission may prescribe. In the event that collection of the tax is prescribed without the use of stamps as hereinbefore provided, all of the provisions of this article not inconsistent with this section shall apply.

2. For the purposes of this article the following terms shall have the following meanings: (a) An "affiliated clearing corporation" shall, if it has a place of business in this state, include a clearing corporation as defined in section 8--102 of the uniform commercial code and a clearing corporation affiliated with a national securities exchange or association registered with the securities and exchange commission of the United States, and the persons, firms, corporations, companies or associations by whom taxes may be paid without the use of stamps may, in the discretion of the tax commission, include depositors in the system maintained by such clearing corporation.

(b) A "qualified securities exchange" shall include any securities exchange located outside this state or any national securities association which is registered with the securities and exchange commission of the United States and which is a participant in an intermarket linkage system in which one or more national securities exchanges located within this state is a participant of such system.

(c) A "qualified clearing corporation" shall include a clearing corporation as defined in section 8--102 of the uniform commercial code which is affiliated with a qualified securities exchange.

ARTICLE 12-A

TAX ON GASOLINE AND SIMILAR MOTOR FUEL

Section 282. Definitions.

- 282-a. Imposition of excise tax on Diesel motor fuel.
- 282-b. Additional Diesel motor fuel tax.
- 282-c. Supplemental Diesel motor fuel tax.
- 283. Registration of distributors.
- 283-a. Licensing of importing transporters.
- 283-b. Licensing of terminal operators.
- 283-c. Liquefied petroleum gas fuel permit.
- 283-d. Registration of wholesalers of motor fuel.
- 284. Tax imposed.
- 284-a. Additional motor fuel tax.
- 284-c. Supplemental motor fuel tax.
- 284-d. Petroleum testing fee.
- 284-e. Taxes imposed on qualified reservations.
- 285. Special provisions as to imposition of tax on certain motor fuel.
- 285-a. Presumption of taxability.
- 285-b. Presumption of taxability--Diesel motor fuel.
- 286. Records to be kept by distributors and others.
- 286-a. Records and reports of transportation of motor fuel and diesel motor fuel.
- 286-b. Transportation of motor fuel or diesel motor fuel; manifest required.
- 287. Payment of tax; returns.
- 288. Determination of tax.
- 288-a. Jeopardy assessments.
- 289. Proceedings to recover tax.
- 289-a. Tax to be paid but once; foreign and interstate commerce; injunction.
- 289-b. Penalties and interest.
- 289-c. Refunds.
- 289-d. Mailing rules; holidays.
- 289-e. Deposit and disposition of revenue.
- 289-f. Joint administration of taxes.

§ 282. Definitions. As used in this article, 1. a. With respect to motor fuel, "distributor" means any person, firm, association or

corporation, who or which imports or causes to be imported into the state, for use, distribution, storage or sale within the state, any motor fuel; and also any person, firm, association or corporation who or which produces, refines, manufactures or compounds motor fuel within the state.

b. With respect to Diesel motor fuel, "distributor" means any person, firm, association or corporation (i) who or which imports or causes to be imported into the state, for use, distribution, storage or sale within the state, any Diesel motor fuel; (ii) who or which produces, refines, manufactures or compounds Diesel motor fuel within the state; (iii) who or which makes a sale or use of Diesel motor fuel in this state other than: (A) a retail sale not in bulk or (B) the self-use of Diesel motor fuel which has been the subject of a retail sale to such person; (iv) who or which is registered by the department as a distributor of kero-jet fuel pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this article. For the purposes of this article when used with respect to Diesel motor fuel, a "retail sale not in bulk" means the making or offering to make any sale of Diesel motor fuel to a consumer of such fuel which is delivered directly into a motor vehicle for use in the operation of such vehicle. A "retail sale in bulk" means the making or offering to make any sale of Diesel motor fuel to a consumer which is other than a "retail sale not in bulk". Motor fuel or Diesel motor fuel brought into the state in the ordinary fuel tank connecting with the engine of a motor vehicle, aeroplane, motor boat or other conveyance propelled by the use of such motor fuel or Diesel motor fuel, and to be used only in the operation thereof, shall not be deemed imported within the meaning of this article, if not removed from such tank except as used in the propulsion of such engine.

2. "Motor fuel" means gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specifications D4806 or D4814 or other product which is suitable for use in operation of a motor vehicle engine.

3. "Motor vehicle" means any vehicle propelled by any power other than muscular, except boats, road building machinery, power shovels, tractor cranes, tractors used exclusively for agricultural purposes and such vehicles as are run only on rails or tracks.

4. "Purchaser" shall include, in addition to its usual meaning, the distributor in the case of transfer of motor fuel by a distributor from his, their or its stock, into a motor vehicle, or into a container from which motor fuel is supplied by the distributor to a motor vehicle or vehicles of the distributor or of others.

5. "Sale" shall include, in addition to its meaning under article twenty-eight of this chapter, the transfer of fuel by a distributor into a motor vehicle or into a receptacle from which fuel is supplied by him or it to his or its own or other motor vehicles.

6. "Filling station" shall include any place, location or station where motor fuel, highway Diesel motor fuel or water-white kerosene (exclusively for heating purposes in containers of no more than twenty gallons), is offered for sale at retail.

7. "Owner" shall include any person offering motor fuel for sale at retail.

8. "Person" includes an individual, copartnership, limited liability company, society, association, corporation, joint stock company, and any combination of individuals and also an executor, administrator, receiver, trustee or other fiduciary.

9. "Omnibus carrier" shall mean every person engaged in operating an omnibus line subject to the supervision of the state department of public service under article three-a of the public service law, including every person operating omnibuses used for the transportation of school children under a contract made pursuant to the provisions of the education law.

10. "Taxicab licensee" shall mean every corporation, company,

association, partnership and person engaged in operating a taxicab, as defined in section one hundred forty-eight-a of the vehicle and traffic law, and licensed by local authorities as defined in section one hundred twenty-two of such law to operate at a fixed rate of fare.

11. "Nonpublic school operator" shall mean any nonpublic elementary or secondary school which owns or leases and operates any vehicle solely and exclusively for its purposes.

12. "Transporter" means any person who or which has the use or control, or the right to the use or control of any means of transportation used in transporting motor fuel including a barge, truck or pipeline. "Importing transporter" means any transporter who or which transports motor fuel in the state where such motor fuel is being imported into the state for use, distribution, storage or sale in the state. "Exporting transporter" means any transporter who or which transports motor fuel in this state where such motor fuel is being exported from a point in this state to without this state.

13. "Terminal" means a motor fuel or Diesel motor fuel storage facility with a storage capacity of fifty thousand gallons or more excluding such facility at which motor fuel or Diesel motor fuel is stored solely for its retail sale at such facility. "Terminal operator" means any person who or which has the use of or control over, or the right to so use or control, a terminal.

14. "Diesel motor fuel" shall mean No. 1 Diesel fuel, No. 2 Diesel fuel, biodiesel, kerosene, fuel oil or other middle distillate and also motor fuel suitable for use in the operation of an engine of the diesel type, excluding, however, any product specifically designated "No. 4 Diesel fuel" and not suitable as a fuel used in the operation of a motor vehicle engine.

16. "Non-highway Diesel motor fuel" means any Diesel motor fuel that is designated for use other than on a public highway (except for the use of the public highway by farmers to reach adjacent lands), and is dyed Diesel motor fuel as defined in subdivision eighteen-a of this section.

16-a. "Highway Diesel motor fuel" means any Diesel motor fuel which is not non-highway Diesel motor fuel.

17. "Fixed base operator" means any person, firm, association or corporation, who or which engages in the sale of kero-jet fuel or aviation gasoline, or both, for airplanes from a fixed and permanent place at an airport within the state.

18. "Indian nation or tribe" means one of the following New York state Indian nations or tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechauge Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca and Tuscarora Nation.

18-a. "Dyed Diesel motor fuel" means Diesel motor fuel which has been dyed in accordance with and for the purpose of complying with the provisions of 26 USC §4082(a) and the regulations thereunder, as may be amended from time to time.

19. "Qualified Indian" means a person duly enrolled on the tribal rolls of one of the Indian nations or tribes. In the case of the Cayuga Indian Nation of New York, such term shall include enrolled members of such nation when such enrolled members purchase motor fuel on any Seneca reservation.

20. "Qualified reservation" means (a) lands held by an Indian nation or tribe that is located within the reservation of that nation or tribe in the state;

(b) lands within the state over which an Indian nation or tribe exercises governmental power and that are either (i) held by the Indian nation or tribe subject to restrictions by the United States against alienation, or (ii) held in trust by the United States for the benefit of such Indian nation or tribe;

(c) lands held by the Shinnecock Tribe or the Poospatuck (Unkechauge) Nation within their respective reservations; or

(d) any land that falls within paragraph (a) or (b) of this

subdivision, and which may be sold and replaced with other land in accordance with an Indian nation's or tribe's land claims settlement agreement with the state of New York, shall nevertheless be deemed to be subject to restriction by the United States against alienation.

21. "Reservation motor fuel seller" means a seller of motor fuel or Diesel motor fuel which is an Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells motor fuel within the boundaries of a qualified reservation.

* 22. "E85" means a fuel blend consisting of ethanol and motor fuel, which meets the ASTM International active standard D5798 for fuel ethanol.

* NB Repealed September 1, 2031

* 23. "B20" means a mixture consisting by volume of twenty percent biodiesel and the remainder of which is diesel motor fuel. "Biodiesel" shall mean either "qualified biodiesel" or "unqualified biodiesel." "Qualified biodiesel" means a diesel motor fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the ASTM International active standard D6751 for biodiesel fuel. "Unqualified biodiesel" means a diesel motor fuel substitute produced from nonpetroleum renewable resources that does not meet the ASTM International active standard D6751 for biodiesel fuel.

* NB Repealed September 1, 2031

* 24. "CNG" means fuel comprised primarily of methane, stored in either a gaseous or liquid state, suitable for use and consumption in the engine of a motor vehicle.

* NB Repealed September 1, 2031

* 25. "Hydrogen" means fuel comprised primarily of molecular hydrogen, stored in either a gaseous or liquid state, suitable for use and consumption in the engine of a motor vehicle.

* NB Repealed September 1, 2031

26. "Public highway" means public highway as defined in subdivision six of section five hundred one of this chapter.

27. "Wholesaler of motor fuel" means any person, firm, association or corporation who or which: (1) is not a distributor of motor fuel; (2) makes a sale of motor fuel in this state other than a retail sale not in bulk; and (3)(A) makes any purchases of motor fuel for resale within the region set forth in subparagraph (i) or (ii) of paragraph one of subdivision (e) of section eleven hundred eleven of this chapter; or (B) makes any sales of motor fuel, other than retail sales not in bulk, within the region set forth in subparagraph (i) or (ii) of paragraph one of subdivision (e) of section eleven hundred eleven of this chapter. For the purposes of this article when used with respect to motor fuel, a "retail sale not in bulk" means the making or offering to make any sale of motor fuel to a consumer of such fuel which is delivered directly into a motor vehicle for use in the operation of such vehicle. A "retail sale in bulk" means the making or offering to make any sale of motor fuel to a consumer which is other than a "retail sale not in bulk".

§ 282-a. Imposition of excise tax on Diesel motor fuel. 1. There is hereby levied and imposed with respect to Diesel motor fuel an excise tax of four cents per gallon upon the sale or use of Diesel motor fuel in this state.

The excise tax is imposed on the first sale or use of Diesel motor fuel to occur which is not exempt from tax under this article. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the removal of highway Diesel motor fuel from a terminal, other than by pipeline, barge, tanker or other vessel, or the delivery of Diesel motor fuel to a filling station or into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof whichever event shall be first to occur. The tax shall be computed based upon the number of gallons of Diesel motor fuel sold, removed or used or the number of gallons of Diesel fuel delivered into the fuel tank of a motor vehicle, as the case may be. Nothing in this article shall be construed to require the payment of such excise tax more than once upon the same Diesel motor fuel. Nor shall the collection of such tax be made applicable to the sale or use of Diesel motor fuel

under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. Provided, further, no Diesel motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed as required by this article or whether the return which is filed correctly shows the amount of tax due.

2. No person shall sell or use Diesel motor fuel within this state (other than a retail sale not in bulk or self-use of Diesel motor fuel which has been the subject of a retail sale), import or cause the importation of Diesel motor fuel into the state or produce, refine, manufacture or compound Diesel motor fuel within the state unless such person shall be registered by the department as a distributor of Diesel motor fuel. Provided, the commissioner shall not register as a distributor of Diesel motor fuel any person who is engaged solely in one or both of the following: (i) any person who makes or offers to make a retail sale not in bulk of such fuel or (ii) any person who purchases Diesel motor fuel in bulk in this state for the sole purpose of self-use. The commissioner may, however, register as a distributor of kero-jet fuel only a fixed base operator who makes no sales of kero-jet fuel other than retail sales not in bulk delivered directly into the fuel tank of an airplane for use in the operation of such airplane and who makes no other sales of diesel motor fuel. Such registration shall apply only to the wholesale purchase of kero-jet fuel and the retail sale of such fuel not in bulk for delivery directly into the fuel tank of an airplane for use in the operation thereof. Provided, further, that if the commissioner is satisfied that full registration is not necessary in order to protect tax revenues, the commissioner may limit or modify the requirement of registration as a distributor with respect to any person otherwise required to register solely because such person engages in the sale of non-highway Diesel motor fuel where such person makes sales of non-highway Diesel motor fuel to the consumer solely for the purposes described in subparagraph (i) of paragraph (b) of subdivision

three of this section, provided that if the commissioner so limits or modifies such registration requirement with respect to such person, then such registration shall apply only to the importation, sale and distribution of such non-highway Diesel motor fuel. The commissioner may also waive any other requirement imposed by this article on such a distributor. All the provisions of section two hundred eighty-three of this article shall apply to applicants for registration and registrants with respect to Diesel motor fuel, and, in addition, distributors with respect to Diesel motor fuel shall be subject to all other provisions of this article relating to distributors of motor fuel, including but not limited to, the keeping of records, the fixing, determination and payment of tax and filing of returns. Provided, further, the commissioner may limit or modify the requirement of registration as a distributor with respect to any person who produces for self use "unqualified biodiesel."

3. (a) The tax imposed by this section shall not apply to the sale of untaxed Diesel motor fuel to or the use of such fuel by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such Diesel motor fuel is used by such organization for its own use or consumption.

(b) The tax on the incidence of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale or use of non-highway Diesel motor fuel, but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highway by farmers to reach adjacent farmlands); provided, however, this exemption shall in no event apply to a sale of non-highway Diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle (except for delivery at a farm site which qualifies for the exemption under subdivision (g) of section three hundred one-b of this chapter); or (ii) a sale to the consumer consisting of not more than twenty gallons of water-white kerosene to be used and consumed exclusively for heating purposes; or (iii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for

heating purposes in containers of no more than twenty gallons; or (iv) a sale of kero-jet fuel to an airline for use in its airplanes or a use of kero-jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel by a registered distributor of Diesel motor fuel to a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane; or (vi) a retail sale not in bulk of kero-jet fuel by a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fuel is delivered directly into the fuel tank of an airplane for use in the operation of such airplane; or (vii) the sale of previously untaxed qualified biodiesel to a person registered under this article as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such qualified biodiesel can be dispensed into the fuel tank of a motor vehicle; or (viii) the sale of previously untaxed highway Diesel motor fuel by a person registered under this article as a distributor of Diesel motor fuel to a person registered under this article as a distributor of Diesel motor fuel where the highway Diesel motor fuel is either: (A) being delivered by pipeline, railcar, barge, tanker or other vessel to a terminal, the operator of which terminal is registered under section two hundred eighty-three-b of this article, or (B) within such a terminal where it has been so delivered. Provided, however, that the exemption set forth in this subparagraph shall not apply to any highway Diesel motor fuel if it is removed from a terminal, other than by pipeline, barge, tanker or other vessel.

(c) Nothing in this article shall exempt non-highway diesel motor fuel from the imposition of the tax under this section, if such non-highway diesel motor fuel is intended for use on the waterways of the state including any other waterways bordering on the state, for operating pleasure or recreational motor boats thereon.

4. The tax imposed by this section on Diesel motor fuel shall be passed through by the seller and included as part of the selling price

to each purchaser of such fuel. Provided, however, the amount of the tax imposed by this section may be excluded from the selling price of Diesel motor fuel where (i) a sale of Diesel motor fuel is made to an organization described in paragraph (a) of subdivision three of this section solely for the purpose stated therein; (ii) a sale of non-highway Diesel motor fuel is made to a consumer but only if such non-highway Diesel motor fuel is not delivered to a filling station, nor delivered into a storage tank which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; or (iii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (iv) a sale of kero-jet fuel is made to an airline for use in its airplanes.

5. All the provisions of this article relating to the administration and collection of the taxes on motor fuel, except section two hundred eighty-three-a of this article, shall be applicable to the tax imposed by this section with such limitation as specifically provided for in this article with respect to Diesel motor fuel and with such modification as may be necessary to adapt the language of such provisions to the tax imposed by this section. With respect to the bond or other security required by subdivision three of section two hundred eighty-three of this article, the commissioner, in determining the amount of bond or other security required for the purpose of securing tax payments, shall take into account the volume of non-highway Diesel motor fuel and other Diesel motor fuel sold for exempt purposes by a distributor of Diesel motor fuel during prior periods as a factor reducing potential tax liability along with any other relevant factors in determining the amount of security required. With respect to the bond required to be filed prior to registration as a Diesel motor fuel distributor, no bond shall be required of an applicant upon a finding of the applicant's fiscal responsibility, as reflected by such factors as net worth, current assets and liabilities, and tax reporting and payment history, and the department shall not provide for a minimum bond of every applicant.

§ 282-b. Additional Diesel motor fuel tax. In addition to the tax imposed by section two hundred eighty-two-a of this chapter, a like tax shall be imposed at the rate of three cents per gallon upon sale or use within the state of Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling station or into the fuel tank of a motor vehicle for use in the operation thereof. Except as otherwise provided in this section, all of the provisions of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-two-a. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, two thousand one, seventy-five per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited in the

dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

§ 282-c. Supplemental Diesel motor fuel tax. In addition to the taxes imposed by sections two hundred eighty-two-a and two hundred eighty-two-b of this chapter, a like tax shall be imposed at the rate of one cent per gallon upon the sale or use within the state of Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling station or into the fuel tank of a motor vehicle for use in the operation thereof. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-two-a. On and after the first day of October, nineteen hundred seventy-two, twenty-five per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund established pursuant to the provisions of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred eighty-three, twenty-five per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund established pursuant to the provisions of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section

shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

§ 283. Registration of distributors. 1. The department of taxation and finance, upon the application of a person, shall register such person as a distributor under this article except as provided in subdivisions two and five of this section. The application shall be in a form and contain such data as the department of taxation and finance shall prescribe. No person, unless so registered, shall import or cause any motor fuel to be imported into the state, for use, distribution, storage or sale within the state or shall produce, refine, manufacture or compound motor fuel within the state. No distributor, unless so registered, shall make any sale, transfer, use or other disposition of motor fuel within the state, except a sale, transfer, use or other disposition, if any, as to which the state cannot impose such condition by reason of the United States constitution and of laws of the United States enacted pursuant thereto.

2. Where a person files an application for registration under this

section and in considering such application the commissioner ascertains that (a) any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter has been finally determined to be due from such applicant or from any officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or any shareholder or employee of such applicant under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, and has not been paid in full, (b) a liability for the penalty provided for under subdivision two of section two hundred eighty-nine-b of this chapter has been finally determined to be due from an officer, director, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, employee or partner of such applicant or a shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, and has not been paid in full, (c) such applicant has been convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, (d) an officer, director or partner of such applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant who, as such employee or shareholder, is under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, has been convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any

other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, or an employee of such applicant was, in his capacity as a person under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of any person, convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, (e) such applicant, or an officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or employee or shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, who was an officer, director or partner of another person, or who directly or indirectly owned more than ten percent of the number of shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or who was an employee or shareholder of another person under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such other person at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due, from such other person and where such tax has not been paid in full, or at the time such other person was convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, or at the time the

registration of such other person was cancelled or suspended pursuant to subdivision four of this section within the preceding five years, or at the time such other person committed any of the acts or omissions which are, or was convicted as, specified in subdivision four of this section within the preceding five years, provided, however, where an applicant or such officer, director, partner, shareholder or employee of such applicant was only an employee of another person, the applicable examination of tax payment history of such other person shall be limited to the taxes imposed by this article or by or pursuant to article twenty-eight or twenty-nine of this chapter with respect to motor fuel and the applicable examination of prior criminal convictions shall be limited to those which relate to motor fuel, (f) the registration of such applicant or of an officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or employee or shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant has been cancelled or suspended pursuant to subdivision four of this section within the preceding five years, or (g) the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of the applicant, has committed any of the acts or omissions which are, or was convicted as, specified in subdivision four of this section within the preceding five years, the commissioner may refuse to register such applicant.

3. The tax commission shall require a distributor to file with the department of taxation and finance a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or

other security acceptable to the tax commission, in such amount as the tax commission may fix, in an amount determined in accordance with rules and regulations prescribed by it, to secure the payment of any sums due from such distributor (i) pursuant to this article and (ii) pursuant to articles twenty-eight and twenty-nine of this chapter with respect to sales and uses of motor fuel. The tax commission shall require that such a bond or other security be filed before a distributor is registered, and the amount thereof may be increased at any time when in its judgment the same is necessary as a protection to the revenues under this article and articles twenty-eight and twenty-nine of this chapter. If securities are deposited as security under this subdivision, such securities shall be kept in the joint custody of the comptroller and the commissioner of taxation and finance and may be sold by the tax commission if it becomes necessary so to do in order to recover any sums due from such distributor (i) pursuant to this article and (ii) pursuant to articles twenty-eight and twenty-nine of this chapter with respect to sales and uses of motor fuel, but no such sale shall be had until after such distributor shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale the surplus, if any, above the sums due (i) under this article and (ii) pursuant to articles twenty-eight and twenty-nine of this chapter with respect to sales and uses of motor fuel shall be returned to such distributor. The department, when authorized by the distributor, shall furnish information regarding the distributor's registration and any other information which the distributor authorizes it to disclose.

4. The registration of any distributor may be cancelled or suspended by the commissioner where a registrant, or an officer, director, shareholder, employee or partner of the registrant who as such officer, director, shareholder, employee or partner is under a duty to act for such registrant or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such registrant, fails to file a bond or other security when required or when the amount thereof is increased, or fails to continue to maintain in full force and effect at all times the required bond or other security filed with the

commissioner, or fails to comply with any of the provisions of this article or article twenty-eight of this chapter with respect to motor fuel or any rule or regulation adopted pursuant to this article or article twenty-eight of this chapter with respect to motor fuel by the department of taxation and finance or by the commissioner, or knowingly aids and abets another person in violating any of the provisions of such articles or of any such rule or regulation with respect to motor fuel, or transfers its registration as a distributor without the prior written approval of the commissioner. A registration may also be cancelled or suspended if the commissioner determines that a registrant or an officer, director, shareholder, employee or partner of the registrant who as such officer, director, shareholder, employee or partner is under a duty to act for such registrant or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such registrant:

(i) commits fraud or deceit in his operations as a distributor or has committed fraud or deceit in procuring his registration;

(ii) has been convicted in a court of competent jurisdiction, either within or without the state, of a felony, within the meaning of subdivision eight of this section, bearing on such distributor's duties and obligations under this chapter;

(iii) has knowingly aided and abetted a person who is not registered as a distributor in the importation, production, refining, manufacture or compounding of motor fuel;

(iv) has impersonated any person represented to be a distributor under this article but not in fact registered under this section; or

(v) has knowingly aided and abetted the distribution of motor fuel imported, caused to be imported, produced, refined, manufactured or compounded by a distributor who is not registered by the department of taxation and finance.

A registration may also be cancelled or suspended if the commissioner determines that a registrant or an officer, director, shareholder, employee or partner of the registrant who as such officer, director, shareholder, employee or partner is under a duty to act for such

registrant or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such registrant, was an officer, director, shareholder, employee or partner of another person who as such officer, director, shareholder, employee or partner was under a duty to act for such other person or was a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such other person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such other person at the time such other person committed any of the acts or omissions which are, or was convicted as, specified in this subdivision within the preceding five years.

5. A registration shall not be cancelled or suspended nor shall an application for registration be refused unless the registrant or applicant has had an opportunity for a hearing, provided, however, that an application for registration may be denied without a prior hearing. Provided, further, a registration may be cancelled or suspended without a prior hearing, for failure to file a return within ten days of the date prescribed for filing a return under this article or article twenty-eight of this chapter with respect to sales and uses of motor fuel, or for nonpayment of any taxes due pursuant to this article or article twenty-eight or twenty-nine of this chapter with respect to sales and uses of motor fuel if the registrant shall have failed to file such return or pay such taxes within ten days after the date the demand therefor is sent by registered or certified mail to the address of the distributor given in his application for registration, or an address substituted therefor as provided in this subdivision. A registration may be cancelled or suspended prior to a hearing for the failure to continue to maintain in full force and effect at all times the required bond or other security filed with the tax commission. Provided, however, if a surety bond is cancelled prior to expiration, the tax commission, after considering all the relevant circumstances, may make such other arrangements and require the filing of such other bond or other security as it deems appropriate. Provided, further, a registration may be cancelled or suspended prior to a hearing for the transfer of such

registration without the prior written approval of the state tax commission. A distributor shall immediately inform the department, in writing, of any change in its address and, if the distributor is a corporation or partnership, the distributor shall immediately inform the department, in writing, of any change in its officers, directors or partners or their residence addresses as shown in its application for registration.

6. (a) A notice of proposed cancellation or suspension of registration or refusal to register shall be given to the person registered pursuant to this article or to a person applying for such registration in the manner prescribed for a notice of determination of tax and all the provisions of this article applicable to a notice of determination under section two hundred eighty-eight of this chapter, including, but not limited to, those provisions authorizing the commissioner to make a redetermination on the commissioner's own motion, shall apply to a notice issued pursuant to this subdivision, insofar as such provisions can be made applicable to the notice authorized by this subdivision, with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this subdivision. In the case of a person applying to register, a notice of proposed refusal to register shall be issued promptly after application for registration is received by the commissioner. Upon timely application therefor, a hearing shall be scheduled in the division of tax appeals, and within three months from such application for hearing (determined with regard to any postponements of any scheduled hearing or conference or other delay made at the request of the applicant) the administrative law judge shall render a determination either upholding the commissioner's refusal to register or ordering the commissioner to register the applicant. Within fifteen days after the giving of notice of the administrative law judge's determination, the applicant or the commissioner may take exception to the determination. If an exception is taken, the tax appeals tribunal, within seventy-five days from the date of notice to the tribunal that exception is being taken to an administrative law judge's determination, shall issue a decision either affirming or reversing such determination. If the administrative law judge renders a determination ordering the commissioner to register the

applicant and the commissioner takes exception to such determination, the commissioner shall not be required to register such applicant unless and until the tax appeals tribunal issues a decision affirming such determination. The applicant shall not be registered until there has been filed a bond or other security in the required amount. Such notice of proposed cancellation or suspension or of proposed refusal to register must be given to such person within five years from the date of the act or omission referred to in subdivision two or four of this section, except that in the case of acts involving falsity or fraud, such notice may be issued at any time. All of such notices of proposed cancellation or suspension or of proposed refusal to register shall contain a statement advising the person to whom it is issued that the cancellation, suspension or refusal to register may be challenged through a hearing process and that the petition for such challenge must be filed with the division of tax appeals within ninety days after the giving of such notice. Where a registration is cancelled or suspended prior to a hearing, the cancellation or suspension may be challenged through the hearing process provided the petition for such challenge is filed within ninety days after the giving of notice of such cancellation or suspension.

(b) Notwithstanding any other provision to the contrary:

(i) In the event that the commissioner determines that an increase in the amount of the bond or other security filed by a registrant is required to secure the liability of such registrant, such bond increase or other security increase must be filed by such registrant within thirty days from the day the notice and demand therefor has been given by the commissioner. If the registrant fails to (A) file such increase in the amount of bond or other security within such period or (B) make timely application for a hearing with particular respect to the amount of the increase of such bond or other security, the commissioner shall cancel or suspend the registration of such registrant.

(ii) The registrant may apply to the division of tax appeals for a hearing to review an increase in the amount of the bond or other security required to be filed by making application therefor within seven days of the day that the notice and demand for an increase is given by the commissioner, provided, the division of tax appeals may, by regulation, for the causes stated therein, extend such period to a

period not exceeding fifteen days from the day such notice and demand is given. If the registrant timely applies for a hearing to review the increase, such hearing shall be held, unless extended by the division of tax appeals for good cause, no less than seven days and no more than ten days after the application for a hearing is received by the division of tax appeals. Within fifteen days of the receipt of the application for a hearing, unless extended by the division of tax appeals, the administrative law judge shall render a determination with respect to the increase in the amount of the bond or other security and, if the amount of such bond or other security is determined to be due, such increase shall be filed within seven days from the day the administrative law judge gives notice of the determination, or, if later, thirty days from the day the notice and demand for the increase had been given by the commissioner. Notwithstanding that the registrant takes exception to the administrative law judge's determination that an increased bond or other security is due, if the increased bond or other security is not filed within such time, the commissioner shall cancel or suspend the registration of the registrant. Where the administrative law judge determines that an increased bond or other security is not due but such determination is reversed by the tax appeals tribunal, if the increased bond or other security is not filed within seven days from the day the tax appeals tribunal gives notice of its decision notwithstanding any judicial review of such decision of the tax appeals tribunal, the commissioner shall cancel or suspend the registration of the registrant.

7. Temporary restraining order and permanent injunction against unlawful importation and forfeiture of unlawfully imported or produced motor fuel or diesel motor fuel. (a) Whenever evidence is furnished by the commissioner to any justice of the supreme court, in court or at chambers, showing that any person not registered as a distributor as required by this article has imported motor fuel or diesel motor fuel into this state or caused motor fuel or diesel motor fuel to be imported into this state or has produced, refined, manufactured or compounded motor fuel or diesel motor fuel, such justice may make a temporary order without notice prohibiting such person and his agents from selling, transferring or otherwise disposing of any such fuel or any fuel and

also prohibiting all other persons in possession of or having control over the same from selling, releasing, transferring or otherwise disposing of any motor fuel or diesel motor fuel imported, produced, refined, manufactured, compounded, sold or transferred by such person not so registered pending a hearing for a preliminary injunction.

(b) Upon granting a temporary order, the court shall direct that a hearing be held at the earliest possible time upon such notice and service as the court shall direct and at the same time, if such action has not yet been commenced, the commissioner shall commence an action in supreme court for a permanent injunction and forfeiture of motor fuel or diesel motor fuel pursuant to paragraph (c) of this subdivision. Where, after such opportunity for a hearing, the court determines that there is a substantial probability that the commissioner will prevail in such action, the court shall grant a preliminary injunction restraining the sale, release, transfer or other disposition of fuel subject to the temporary order.

(c) (1) If it is established by clear and convincing evidence that motor fuel or diesel motor fuel was imported, caused to be imported, produced, refined, manufactured or compounded by any person not registered as a distributor as required by this article, the court shall grant a judgment (i) permanently enjoining such person and his agents from selling, transferring or otherwise disposing of any such fuel or any fuel within this state and (ii) declaring the forfeiture of any fuel that was so imported, caused to be imported, produced, refined, manufactured, or compounded by such person.

(2) With respect to motor fuel or diesel motor fuel that was imported, caused to be imported, produced, refined, manufactured or compounded, by a person not registered as a distributor as required by this article or that was unlawfully sold or transferred by such person, if it is established by clear and convincing evidence that any other person in possession of or having control over such fuel was not a purchaser or transferee in good faith of such fuel with respect to the fact that such fuel was so imported, caused to be imported, produced, refined, manufactured, or compounded by a person not registered as a distributor as required by this article or that such fuel was so unlawfully sold or transferred by such person, the court shall grant a judgment (i) permanently enjoining such other person and his or her agents from

selling, releasing, transferring or otherwise disposing of any such fuel and (ii) declaring the forfeiture of such fuel in the possession or under the control of such other person.

(d) The commissioner may, at any time subsequent to the granting of the temporary order pursuant to paragraph (a) of this subdivision, in his or her sole discretion consent to a sale of motor fuel or diesel motor fuel subject to such temporary order which is in the possession or under the control of a person other than the person or the agent of the person who imported, caused to be imported, produced, refined, manufactured, compounded or unlawfully sold or transferred such fuel. As a condition of granting permission to a sale of motor fuel or diesel motor fuel pursuant to this subdivision, the commissioner shall require the payment of all taxes, penalties and interest imposed by and pursuant to the authority of this chapter with respect to such fuel.

(e) (1) At any time during the pendency of an action under this section, the motor fuel or diesel motor fuel subject to a temporary, preliminary or permanent order hereunder may be released from the scope of such order if there is given an undertaking, in an amount equal to the market value of such fuel plus state excise and sales taxes and federal excise taxes, to the effect that there will be paid to the commissioner the amount of the market value of such fuel and such taxes in the event that such fuel is adjudged forfeited.

(2) Any person enjoined by a temporary order or a preliminary injunction issued pursuant to this subdivision may move at any time, on notice, to vacate or modify it.

(f) The procedures of the civil practice law and rules applicable to temporary restraining orders, preliminary injunctions and permanent injunctions not inconsistent with this subdivision shall apply to temporary orders, preliminary injunctions and permanent injunctions issued under this subdivision and any provision of this subdivision which is not in accord with the constitutional mandate of such procedures of the civil practice law and rules shall be deemed to be modified as necessary to accord with such a mandate. The procedural provisions set forth in paragraph three of subdivision (d) and in subdivision (j) of section eighteen hundred forty-eight of this chapter shall apply to the forfeiture proceedings under this subdivision and, in respect to a declaration of forfeiture under this subdivision, the court

shall direct the commissioner to sell or otherwise dispose of such forfeited motor fuel or diesel motor fuel on such conditions the commissioner deems most advantageous and just under the circumstances. The commissioner shall not be required to file any undertaking in connection with an action pursuant to this subdivision.

8. (a) For the purposes of this section, in determining whether any person has been convicted of a felony, the provisions of this subdivision shall apply; provided, however if any such conviction be subsequently set aside or reversed upon appeal and the accused acquitted or discharged, the registration which has been cancelled or suspended as a result of such conviction shall be restored.

(b) A conviction of a felony shall include the conviction of a felony by any court in this state or by any court of the United States or by any court of any other state of the United States; provided, however, that if a crime of which a person is convicted by any court of the United States or any other state is a felony in the jurisdiction in which the conviction is had but is not a felony in the state of New York, then the conviction shall not be deemed a conviction of a felony for the purpose of this article. In the event that a crime of which a person is convicted by any court of the United States or by any court of any other state is not a felony in the jurisdiction in which the conviction is had but is a felony in the state of New York, then the conviction shall be deemed a conviction of a felony for the purposes of this article.

(c) If a person convicted of a felony or crime deemed hereby to be a felony is subsequently pardoned by the governor of the state where such conviction was had, or by the president of the United States, or shall receive a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law for the purpose of removing the disability under this section because of such conviction, the tax commission may, in its discretion, on application of such person and compliance with subdivision two of this section, and on the submission to it of satisfactory evidence of good moral character and suitability, again register such person as a distributor under this article.

9. (a) The registration granted to a distributor by the state tax commission shall be personal to the person to whom it is granted. The transfer of such registration without the prior written approval of the state tax commission is invalid and such transfer without approval shall be grounds for the immediate cancellation or suspension of the registration of the registrant. The tax commission shall establish by rule or regulation a specific procedure for the review of an application for registration in these instances where there has been a proposed transfer of registration, and the tax commission in making its determination with respect to such approval shall review such application in such instance as any other application for registration under this section and shall make its determination in accordance with the criteria set forth in this section. Provided further, the state tax commission shall issue a determination with respect to such application where there has been a proposed transfer of registration within seventy-five days after the day of the receipt of a properly completed application containing such information as the said tax commission may require. If the tax commission fails to issue a determination within such time, the tax commission shall be required to register such proposed transferee.

(b) For the purposes of this subdivision, a registration shall be considered to be transferred where, among other things, there is any addition or substitution of a partner of the registrant or the acquisition by any person of such shares of stock of the registrant (where such registrant is a corporation) so that such person becomes the owner of more than ten percent of the number of shares of stock of such registrant entitling the holder thereof to vote for the election of directors or trustees. Provided, however, where stock of the registrant or a partnership interest in the registrant or, where the registrant is a sole proprietorship, the interest of the decedent therein along with the registration, is transferred pursuant to bequest or inheritance to (A) an ancestor of the decedent, (B) the spouse of the decedent, (C) a lineal descendent of the decedent, of the descendent's spouse, or of a parent of the decedent, or (D) the spouse of any lineal descendent described in (C) hereof, such transfer shall not, in and of itself, be grounds for cancellation or suspension. Provided, however, within ninety days of the death of the decedent in such instance, the registrant, the

personal representative of the decedent's estate or such person described in subparagraphs (A), (B), (C) or (D) of this paragraph must submit a revised application for registration as a distributor. The state tax commission may then cancel or suspend the registration because of the existence of grounds to do so specified in this section for refusal or denial of an application for registration or for cancellation or suspension of a registration. The failure to submit a revised application for registration within such ninety day period shall be grounds for immediate cancellation or suspension of the registration.

10. For purposes of this section, where reference is made to ownership, directly or indirectly, of more than ten percent of the shares of stock of the applicant or another person entitling the holder thereof to vote for the election of directors or trustees, in the case of an applicant or another person which at the relevant time has four or fewer shareholders holding shares entitling the holders thereof to vote for the election of directors or trustees, twenty-five percent or more shall be substituted as the applicable percentage in such references to ownership, directly or indirectly, of voting stock.

§ 283-a. Licensing of importing transporters. 1. The department, upon the application of a person who transports motor fuel, shall license such person as an importing transporter or exporting transporter, as the case may be, under this article except as provided in subdivisions two and five of this section. The application shall be in a form and contain such data as the department shall prescribe. No person, unless licensed as an importing transporter, shall transport motor fuel in the state where such motor fuel is being imported into the state for use, distribution, storage or sale in the state. No person, unless licensed as an exporting transporter, shall transport motor fuel in this state where such motor fuel is being exported from a point in this state to without this state.

2. Where a person files an application for licensing under this section and in considering such application the commissioner ascertains that (a) any tax imposed under this chapter or any related statute as

defined in section eighteen hundred of this chapter has been finally determined to be due from such applicant or from any officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or any shareholder or employee of such applicant under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, and has not been paid in full, (b) a liability for the penalty provided for under subdivision two of section two hundred eighty-nine-b of this article has been finally determined to be due from an officer, director, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, employee or partner of such applicant or a shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, and has not been paid in full, (c) such applicant has been convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, (d) an officer, director or partner of such applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant who, as such employee or shareholder, is under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, has been convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed

and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, or an employee of such applicant was, in his capacity as a person under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of any person, convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, (e) such applicant, or an officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or employee or shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant, who was an officer, director or partner of another person, or who directly or indirectly owned more than ten percent of the number of shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or who was an employee or shareholder of another person under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such other person at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due from such other person and where such tax has not been paid in full, or at the time such other person was convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United State of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years or at the time the license of such other person was cancelled or suspended pursuant to subdivision four of this section within the preceding five years, or at the time

such other person committed any of the acts or omissions which are, or was convicted as, specified in subdivision four of this section within the preceding five years, provided, however, where an applicant or such officer, director, partner, shareholder or employee of such applicant was only an employee of another person, the applicable examination of tax payment history of such other person shall be limited to the taxes imposed by this article or by or pursuant to article twenty-eight or twenty-nine of this chapter with respect to motor fuel and the applicable examination of prior criminal convictions shall be limited to those which relate to motor fuel, (f) the license of such applicant or of an officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or employee or shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of such applicant has been cancelled or suspended pursuant to subdivision four of this section within the preceding five years, or (g) the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of the applicant, has committed any of the acts or omissions which are, or was convicted as, specified in subdivision four of this section within the preceding five years, the commissioner may refuse to register such applicant.

3. The commissioner may require a transporter seeking licensing to file with the department a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to the commissioner, in such amount as the commissioner may fix, in an amount determined in accordance with rules

and regulations prescribed by the commissioner, to secure the performance by such transporter of the duties and responsibilities required (i) pursuant to this article and (ii) pursuant to articles twenty-eight and twenty-nine of this chapter with respect to motor fuel. The commissioner may require that such a bond or other security be filed before a transporter is licensed, and the amount thereof may be increased at any time when in the commissioner's judgment the same is necessary. If securities are deposited as security under this subdivision, such securities shall be kept in the joint custody of the comptroller and the commissioner and may be sold by the commissioner if it becomes necessary so to do in order to recover against such transporter but no such sale shall be had until after such transporter shall have had opportunity to litigate the validity of the liability if it elects so to do. Upon any such sale the surplus, if any, above the sums due shall be returned to such transporter. The department, when authorized by the transporter, shall furnish information regarding the transporter's license and any other information which the transporter authorizes it to disclose.

4. The license of any importing or exporting transporter may be cancelled or suspended by the commissioner where a licensee, or an officer, director, shareholder, employee or partner of the licensee who as such officer, director, shareholder, employee or partner is under a duty to act for such licensee or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the licensee (where such licensee is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such licensee, fails to file a bond or other security when required or when the amount thereof is increased, or fails to comply with any of the provisions of this article or article twenty-eight of this chapter with respect to motor fuel or any rule or regulation with respect to motor fuel adopted pursuant to such articles by the department or by the commissioner, or knowingly aids and abets another person in violating any of the provisions of such articles or of any such rule or regulation with respect to motor fuel, or transfers its license as an importing transporter or exporting transporter. A license may also be cancelled or suspended if the commissioner determines that a licensee or an officer,

director, shareholder, employee or partner of the licensee who as such officer, director, shareholder, employee or partner is under a duty to act for such licensee or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the licensee (where such licensee is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such licensee:

(i) commits fraud or deceit in his operations as a transporter or has committed fraud or deceit in procuring his license;

(ii) has been convicted in a court of competent jurisdiction, either within or without the state, of a felony, as defined under subdivision eight of section two hundred eighty-three of this article, bearing on such transporter's duties and obligations under this chapter;

(iii) has knowingly aided and abetted a person who is not registered as a distributor in the importation, production, refining, manufacture or compounding of motor fuel; or

(iv) has knowingly aided and abetted the distribution of motor fuel imported, caused to be imported, produced, refined, manufactured or compounded by a distributor who is not registered by the department.

A license may also be cancelled or suspended if the commissioner determines that a licensee or an officer, director, shareholder, employee or partner of the licensee who as such officer, director, shareholder, employee or partner is under a duty to act for such licensee or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the licensee (where such licensee is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such licensee, was an officer, director, shareholder, employee or partner of another person who as such officer, director, shareholder, employee or partner was under a duty to act for such other person or was a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such other person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such other person at the time such other person committed any of the acts or omissions which are, or was convicted as, specified in this subdivision within the preceding five years.

5. A license shall not be cancelled or suspended nor shall an application for a license be refused unless the licensee or applicant for a license has had an opportunity for a hearing, provided, however, that an application for a license may be denied without a prior hearing. Provided, further, a license may be cancelled or suspended without a prior hearing, for failure to file a return or report within ten days of the date prescribed for filing under this article or for nonpayment of any sums due pursuant to this article or article twenty-eight or twenty-nine of this chapter with respect to motor fuel if the licensee shall have failed to file such return or report or pay such sums within ten days after the date the demand therefor is sent by registered or certified mail to the address of the transporter given in his application for a license, or an address substituted therefor as in this subdivision. A license may also be cancelled or suspended prior to a hearing for the failure to continue to maintain in full force and effect at all times the bond or other security filed with the commissioner. Provided, however, if a surety bond is cancelled prior to expiration, the commissioner, after considering all the relevant circumstances, may make such other arrangements and require the filing of such other bond or other security as the commissioner deems appropriate. Provided, further, a license may be cancelled or suspended prior to a hearing for the transfer of such license. A transporter shall immediately inform the department, in writing, of any change in its address and, if the transporter is a corporation or partnership, the transporter shall immediately inform the department, in writing, of any change in its officers, directors or partners or their residence addresses as shown in its application for a license.

6. The provisions of subdivisions six, eight, nine and ten of section two hundred eighty-three of this article shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of these subdivisions had been incorporated in full into this section and had expressly referred to the importing transporter's license or the exporting transporter's license under this section, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant to this section.

§ 283-b. Licensing of terminal operators. 1. The department of taxation and finance, upon the application of a person who operates a facility where motor fuel is deposited, shall license such person as a terminal operator under this article except as otherwise provided in this section. The application shall be in a form and contain such information as the department of taxation and finance shall prescribe. No person, unless so licensed, shall operate a terminal, except that a person may operate a terminal without a license if all of the motor fuel stored in such facility is solely for such person's own use and consumption.

2. Where a person files an application for a license under this section and in considering such application the commissioner ascertains that (a) any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter has been finally determined to be due from such applicant or from any officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or any shareholder or employee of such applicant under a duty to act for such applicant in complying with any requirement of this article, and has not been paid in full, (b) a liability for the penalty provided for under subdivision two of section two hundred eighty-nine-b of this article has been finally determined to be due from an officer, director, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, employee or partner of such applicant or a shareholder of such applicant under a duty to act for such applicant in complying with any requirement of this article, and has not been paid in full, (c) such applicant has been convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter,

within the preceding five years, (d) an officer, director or partner of such applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant who, as such employee or shareholder, is under a duty to act for such applicant in complying with any requirement of this article, has been convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, (e) such applicant, or an officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or employee or shareholder of such applicant under a duty to act for such applicant in complying with any requirement of this article, who was an officer, director or partner of another person, or who directly or indirectly owned more than ten percent of the number of shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or who was an employee or shareholder of another person under a duty to act for such other person in complying with any requirement of this article at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due with respect from such other person and where such tax has not been paid in full, or at the time such other person was convicted of a crime provided for in this chapter or has been convicted under the tax laws or penal laws of any other state, or a political subdivision of this state or such other state, or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar crime under this chapter, within the preceding five years, or at the time the registration of such other person was cancelled or suspended pursuant to subdivision four of this section within the preceding five years, or at the time such other

person committed any of the acts or omissions which are, or was convicted as, specified in subdivision four of this section within the preceding five years, provided, however, where an applicant or such officer, director, partner, shareholder or employee of such applicant was only an employee of another person, the applicable examination of tax payment history of such other person shall be limited to the taxes imposed by this article or by or pursuant to article twenty-eight or twenty-nine of this chapter with respect to motor fuel and the applicable examination of prior criminal convictions shall be limited to those which relate to motor fuel, (f) the license of such applicant or of an officer, director or partner of such applicant, shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or employee or shareholder of such applicant under a duty to act for such applicant in complying with any requirement of this article has been cancelled or suspended pursuant to subdivision four of this section within the preceding five years, or (g) the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant under a duty to act for such applicant in complying with any requirement of this article, has committed any of the acts or omissions which are, or was convicted as, specified in subdivision four of this section within the preceding five years, the commissioner may refuse to grant such applicant a license.

3. The tax commission may require a terminal operator to file with the department of taxation and finance a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to the tax commission, in such amount as the tax commission may fix, in an amount determined in accordance with rules and regulations prescribed by it, to secure the performance by such terminal operator of the duties and responsibilities required (i)

pursuant to this article and (ii) pursuant to articles twenty-eight and twenty-nine of this chapter with respect to motor fuel. The tax commission may require that such a bond or other security be filed before a terminal operator is licensed, and the amount thereof may be increased at any time when in its judgment the same is necessary. If securities are deposited as security under this subdivision, such securities shall be kept in the joint custody of the comptroller and the commissioner of taxation and finance and may be sold by the tax commission if it becomes necessary so to do in order to recover against such terminal operator but no such sale shall be had until after such terminal operator shall have had opportunity to litigate the validity of the liability if it elects so to do. Upon any such sale the surplus, if any, above the sums due shall be returned to such terminal operator. The department, when authorized by the terminal operator, shall furnish information regarding the terminal operator's license and any other information which the terminal operator authorizes it to disclose.

4. The license of any terminal operator may be cancelled or suspended by the commissioner where a licensee, or an officer, director, shareholder, employee or partner of the registrant who as such officer, director, shareholder, employee or partner is under a duty to act for such licensee or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the licensee (where such licensee is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such licensee, fails to file a bond or other security when required or when the amount thereof is increased, or fails to comply with any of the provisions of this article or article twenty-eight of this chapter with respect to motor fuel or any rule or regulation with respect to motor fuel adopted pursuant to such articles by the department of taxation and finance or by the commissioner or, knowingly aids and abets another person in violating any of the provisions of such articles or of any such rule or regulation with respect to motor fuel, or transfers its license as a terminal operator. A license may also be cancelled or suspended if the commissioner determines that a licensee or an officer, director, shareholder, employee or partner of the licensee who as such officer, director, shareholder, employee or partner is under a duty to act for such

licensee or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the licensee (where such licensee is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such licensee:

(i) commits fraud or deceit in his operations as a terminal operator or has committed fraud or deceit in procuring his license;

(ii) has been convicted in a court of competent jurisdiction, either within or without the state, of a felony, within the meaning of subdivision eight of section two hundred eighty-three of this article, bearing on such terminal operator's duties and obligations under this chapter;

(iii) has knowingly aided and abetted a person who is not registered as a distributor in the importation, production, refining, manufacture or compounding of motor fuel; or

(iv) has knowingly aided and abetted the distribution of motor fuel which he has knowledge of as being imported, caused to be imported, produced, refined, manufactured or compounded by a distributor who is not registered by the department of taxation and finance.

A license may also be cancelled or suspended if the commissioner determines that a licensee or an officer, director, shareholder, employee or partner of the licensee who as such officer, director, shareholder, employee or partner is under a duty to act for such licensee or any shareholder directly or indirectly owning more than ten percent of the number of shares of stock of the licensee (where such licensee is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such licensee, was an officer, director, shareholder, employee or partner of another person who as such officer, director, shareholder, employee or partner was under a duty to act for such other person or was a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such other person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees of such other person at the time such other person committed any of the acts or omissions which are, or was convicted as, specified in this subdivision within the preceding five years.

5. A license shall not be cancelled or suspended nor shall an application for a license be refused unless the licensee or applicant for a license has had an opportunity for a hearing, provided, however, that an application for a license may be denied without a prior hearing. Provided, further, a license may be cancelled or suspended without a prior hearing, for failure to file a return or report within ten days of the date prescribed for filing under this article or nonpayment of any sums due pursuant to this article or article twenty-eight or twenty-nine of this chapter with respect to motor fuel if the licensee shall have failed to file such return or report or pay taxes within ten days after the date the demand therefor is sent by registered or certified mail to the address of the terminal operator given in his application for a license, or an address substituted therefor as in this subdivision. A license may be cancelled or suspended prior to a hearing for the failure to continue to maintain in full force and effect at all times the required bond or other security filed with the tax commission. Provided, however, if a surety bond is cancelled prior to expiration, the tax commission, after considering all the relevant circumstances, may make such other arrangements and require the filing of such other bond or other security as it deems appropriate. Provided, further, a license may be cancelled or suspended prior to a hearing for the transfer of such license. A terminal operator shall immediately inform the department, in writing, of any change in its address and, if the terminal operator is a corporation or partnership, the terminal operator shall immediately inform the department, in writing, of any change in its officers, directors or partners or their residence addresses as shown in its application for a license.

6. The provisions of subdivisions six, eight, nine and ten of section two hundred eighty-three of this article shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of these subdivisions had been incorporated in full into this section and had expressly referred to the terminal operator's license under this section, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant to this section.

§ 283-c. Liquefied petroleum gas fuel permit. The department of taxation and finance, upon the application of a person importing, manufacturing or selling liquefied petroleum gas identified as a fuel for use in the operation of a motor vehicle or for use in the operation of a pleasure or recreational motor boat or using or consuming liquefied petroleum gas for such purpose, may issue such person a liquefied petroleum gas fuel permit in lieu of registration as a distributor of motor fuel pursuant to section two hundred eighty-three of this article, provided such person does not import motor fuel other than liquefied petroleum gas fuel or cause motor fuel other than liquefied petroleum gas fuel to be imported into the state for use, distribution, storage or sale in the state or produce, refine, manufacture or compound motor fuel other than liquefied petroleum gas fuel in the state. All the provisions of section two hundred eighty-three of this article shall apply to applicants for liquefied petroleum gas fuel permits under this section and to holders of liquefied petroleum gas fuel permits, provided that the commissioner of taxation and finance may waive the requirement that holders of liquefied petroleum gas fuel permits file a bond or other security. Holders of liquefied petroleum gas fuel permits shall be subject to all other provisions of this article and article twenty-eight of this chapter relating to distributors of motor fuel, including but not limited to, the keeping of records, the fixing, determination and payment of tax and filing of returns. A liquefied petroleum gas fuel permit applies only to the importation, manufacture, sale, use or consumption of liquefied petroleum gas fuel and shall not be considered a distributor registration under this chapter with respect to any motor fuel product other than liquefied petroleum gas. No holder of a liquefied petroleum gas fuel permit shall import or cause any motor fuel other than liquefied petroleum gas fuel to be imported into the state, for use, distribution, storage or sale within the state or shall produce, refine, manufacture or compound motor fuel other than liquefied petroleum gas fuel within the state.

§ 283-d. Registration of wholesalers of motor fuel. (a) Registration required. Each wholesaler of motor fuel must be registered with the

department under this section. No wholesaler of motor fuel shall make a sale of motor fuel in this state other than a retail sale not in bulk unless such wholesaler is so registered. The department, upon the application of a person, shall register such person as a wholesaler of motor fuel except that the commissioner may refuse to register an applicant for any of the grounds specified in subdivision two or five of section two hundred eighty-three of this article or in subdivision (c) of this section. The application shall be in such form and contain such information as the commissioner shall prescribe. All of the provisions of subdivisions two, four, five, six, seven, eight, nine and ten of section two hundred eighty-three of this article relating to registration of distributors shall be applicable to the registration of wholesalers of motor fuel under this section with the same force and effect as if the language of such subdivisions had been incorporated in full in this section and had expressly referred to the registration of wholesalers of motor fuel, with such modification as may be necessary in order to adapt the language of such provisions to the provisions of this section, provided, specifically, that the term "distributor" shall be read as "wholesaler of motor fuel." Provided, however, that if the commissioner is satisfied that the requirements of such provisions for registration are not necessary in order to protect tax revenues, the commissioner may limit or modify such requirements with respect to any person not required to be registered as a distributor of motor fuel.

(b) Bond or other security. The commissioner may require a wholesaler of motor fuel seeking a registration to file with the department a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to the commissioner, in such amount as the commissioner may fix to secure the performance by such wholesaler of motor fuel of the duties and responsibilities required (i) pursuant to this article and (ii) pursuant to articles twenty-eight and twenty-nine of this chapter with respect to motor fuel. The commissioner may require that such a bond or other security be filed before a wholesaler of motor fuel is registered, and the amount thereof may be increased at any time when in the commissioner's judgment the same is necessary. If securities are deposited as security under this subdivision, such securities shall be kept in the joint custody of the

comptroller and the commissioner and may be sold by the commissioner if it becomes necessary so to do in order to recover against such wholesaler of motor fuel but no such sale shall be had until after such wholesaler of motor fuel shall have had opportunity to litigate the validity of the liability if it elects to do so. Upon any such sale the surplus, if any, above the sums due shall be returned to such wholesaler of motor fuel. The department, when authorized by the wholesaler of motor fuel, shall furnish information regarding the registration of the wholesaler of motor fuel and any other information which the wholesaler of motor fuel authorizes it to disclose.

(c) Refusal to register. For the purposes of determining whether to refuse an application for registration under this section, the references in subdivision two of section two hundred eighty-three of this article to employees or shareholders under a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of the applicant or another person shall be deemed to also include an employee under a duty to file a return or pay taxes under or pursuant to the authority of this article on behalf of such applicant or other person. In addition to the grounds specified in section two hundred eighty-three of this article, the commissioner may refuse to register an applicant where the commissioner ascertains that the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant who, as such employee or shareholder is under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of the applicant; (1) has committed any of the acts or omissions which are, or was convicted as, specified in subdivision (d) of this section within the preceding five years; or (2) was an officer, director or partner of another person, or who directly or indirectly owned more than ten percent of the shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or who was an employee or shareholder of another person under

a duty to file a return under or pursuant to the authority of this article or pay the taxes imposed by or pursuant to the authority of this article on behalf of such other person at the time such other person committed any of the acts or omissions which are, or was convicted as, specified in subdivision (d) of this section within the preceding five years.

(d) Cancellation or suspension of registration. The grounds for a cancellation or suspension of a registration under this section as a wholesaler of motor fuel are the same as those grounds specified in section two hundred eighty-three of this article and, in addition to such grounds, the following grounds relating to this article shall apply:

(1) A registration as a wholesaler of motor fuel may be cancelled or suspended if the commissioner determines that a registrant or an officer, director or partner of the registrant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such registrant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of the registrant

(A) fails to file or maintain in full force and effect a bond or other security when required pursuant to subdivision (b) of this section or when the amount thereof is increased,

(B) fails to comply with any of the provisions of this article or any rule or regulation adopted pursuant to this article by the commissioner,

(C) knowingly aids and abets another person in violating any of the provisions of this article or any rule or regulation adopted pursuant to this article by the commissioner,

(D) transfers its registration as a wholesaler of motor fuel without the prior written approval of the commissioner,

(E) with respect to a wholesaler of motor fuel which is a corporation, has been dissolved pursuant to section two hundred three-a and subdivision (d) of section three hundred ten of this chapter,

(F) commits fraud or deceit in his, her or its operations as a wholesaler of motor fuel or has committed fraud or deceit in procuring

his, her or its registration,

(G) has impersonated any person represented to be a wholesaler of motor fuel under this article but not in fact registered as a wholesaler of motor fuel, or

(H) has knowingly aided and abetted the distribution of motor fuel, by any person which such registrant or such other person knows has not been registered by the commissioner as required under this article.

(2) A registration as a wholesaler of motor fuel may be cancelled or suspended if the commissioner determines that a registrant or an officer, director or partner of the registrant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such registrant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of the registrant, was an officer, director or partner of another person or was a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or was an employee or shareholder of another person under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of such other person at the time such other person committed any of the acts specified in paragraph one of this subdivision within the preceding five years.

(e) Cancellation or suspension of registration prior to a hearing. The grounds for cancelling or suspending a registration as a wholesaler of motor fuel prior to a hearing shall be the same as those specified in subdivision five of section two hundred eighty-three of this article and, in addition to such grounds, the following grounds relating to this article shall apply:

(1) the failure to file a return within ten days of the date prescribed for filing a return under this article if the registrant shall have failed to file such return within ten days after the date the demand therefor is sent by registered or certified mail to the address of the wholesaler of motor fuel given in its application, or an address

substituted therefor as provided in subdivision five of section two hundred eighty-three of this article,

(2) the failure to continue to maintain in full force and effect at all times the bond or other security required to be filed pursuant to subdivision (b) of this section, provided, however, that if a surety bond is cancelled prior to expiration, the commissioner may after considering all the relevant circumstances make such other arrangements, and may require the filing of such other bond or other security as it deems appropriate,

(3) the transfer of a registration as a wholesaler of motor fuel without the prior written approval of the commissioner, or

(4) with respect to a wholesaler of motor fuel which is a corporation, the dissolution or annulment of such corporation pursuant to section three hundred ten of this chapter.

§ 284. Tax imposed. 1. There is hereby levied and imposed an excise tax of four cents per gallon upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase "imported or manufactured") or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or consumption and except kero-jet fuel when imported or manufactured by an airline for use in its airplanes. Provided, further, no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of

federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed by such distributor as required by this article or whether the return which is filed correctly shows the amount of tax due.

2. If, prior to April first, nineteen hundred forty-seven, a contract of sale of motor fuel shall have been made, and delivery thereof pursuant to such contract is made within the state thereafter, from a stock of motor fuel which, at the time of the taking of such fuel therefrom for such delivery, is subject to the taxing power of the state, the vendor shall be deemed a distributor, for the purposes of this article, and such motor fuel shall be deemed to be sold, and shall be subject to such tax, at the time of such delivery.

§ 284-a. Additional motor fuel tax. In addition to the tax imposed by section two hundred eighty-four of this chapter, a like tax shall be imposed at the rate of three cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law.

Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, two thousand, seventy-five per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

§ 284-c. Supplemental motor fuel tax. In addition to the taxes imposed by sections two hundred eighty-four and two hundred eighty-four-a of this chapter, a like tax shall be imposed at the rate of one cent per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. On and after the first day of October, nineteen hundred seventy-two, twenty-five per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund established pursuant to the provisions of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred eighty-three, twenty-five per centum of the monies received by the

department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund established pursuant to the provisions of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

§ 284-d. Petroleum testing fee. 1. In addition to the taxes imposed by or pursuant to this article, there is hereby imposed a regulatory fee at the rate of one-half of one mill per gallon upon motor fuel imported,

manufactured or sold within this state by a distributor. The fee imposed by this section shall be administered and collected by the commissioner of taxation and finance in the same manner as the tax imposed by section two hundred eighty-four of this article. Except for the requirement of subdivision one of section two hundred eighty-five-a of this article that the tax be passed through to purchasers and the provisions of subdivisions one through five and nine of section two hundred eighty-nine-c and section two hundred eighty-nine-e of this article, all the provisions of this article applicable to the tax imposed by section two hundred eighty-four of this article shall apply with respect to the fee imposed by this section to the same extent as if it were imposed by such section two hundred eighty-four, insofar as such provisions can be made applicable to the fee imposed by this section, with such modification as may be necessary in order to adapt such provisions to the fee imposed by this section. The commissioner of taxation and finance may make such provisions as the commissioner deems necessary for the joint administration of the fee imposed by this section and the taxes imposed by or pursuant to this article.

2. All fees imposed by this section, together with penalties and interest thereon, which are collected or received by the commissioner of taxation and finance, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the commissioner of taxation and finance. The comptroller shall retain such amount as the commissioner of taxation and finance may determine to be necessary for refunds in respect to the fees imposed by this section, out of which the comptroller shall pay any refunds of such fees to which taxpayers shall be entitled under the provisions of this section. The commissioner of taxation and finance and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from the fee imposed by this section. The comptroller, after reserving such refunds shall, on or before the tenth day of each month, deposit to the credit of the motor fuel quality account, which is hereby established within the miscellaneous state special revenue fund, the fees imposed by this section, together with

penalties and interest thereon, collected or received by such commissioner pursuant to this section during the preceding calendar month. The amount so payable shall be certified to the comptroller by the commissioner of taxation and finance or his delegate, who shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to such fund in any such distribution is more or less than the amount due to such fund, the amount of the overpayment or underpayment shall be certified to the comptroller by the commissioner of taxation and finance or his delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to such fund shall be adjusted by subtracting the amount of any such underpayment from such number of subsequent payments and distributions as the comptroller and the commissioner of taxation and finance shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts or circumstances.

§ 284-e. Taxes imposed on qualified reservations. 1. General. (a) Notwithstanding any other provision of this article to the contrary qualified Indians may purchase motor fuel or Diesel motor fuel for such qualified Indians' own use or consumption exempt from the motor fuel tax or Diesel motor fuel tax on their nations' or tribes' qualified reservations. However, such qualified Indians purchasing motor fuel or Diesel motor fuel off their reservations or on another nation's or tribe's reservation, and non-Indians making motor fuel or Diesel motor fuel purchases on an Indian reservation shall not be exempt from paying the motor fuel tax or Diesel motor fuel tax when purchasing motor fuel or Diesel motor fuel within this state. Accordingly, all motor fuel and Diesel motor fuel sold on an Indian reservation to non-members of the nation or tribe or to non-Indians shall be taxed.

(b) In order to ensure an adequate quantity of motor fuel and Diesel motor fuel on Indian reservations which may be purchased by qualified Indians exempt from the motor fuel tax and Diesel motor fuel tax, the department shall provide Indian nations and tribes within this state

with Indian tax exemption coupons as set forth in this section. A reservation motor fuel seller shall be able to present such Indian tax exemption coupons to a distributor licensed pursuant to this article in order to purchase motor fuel or Diesel motor fuel exempt from the imposition of the motor fuel tax or Diesel motor fuel tax. Qualified Indians may purchase motor fuel or Diesel motor fuel from a reservation motor fuel seller exempt from the motor fuel tax or Diesel motor fuel tax even though the motor fuel tax or Diesel motor fuel tax on such motor fuel or Diesel motor fuel will have been previously paid or assumed by, or passed through to such distributor.

2. Indian tax exemption coupons. (a) Indian tax exemption coupons shall be provided to the recognized governing body of each Indian nation or tribe to ensure that each Indian nation or tribe can obtain motor fuel and Diesel motor fuel upon which the tax shall not be collected that is for the use or consumption by the nation or tribe or by the members of such nation or tribe. The Indian tax exemption coupons shall be provided to the Indian nations or tribes on a quarterly basis for each of the four quarters beginning with the first day of December, March, June, and September. It is intended that the Indian nations or tribes will retain the amount of Indian tax exemption coupons they will need each quarter to purchase motor fuel and Diesel motor fuel for official nation or tribal use, and will distribute the remaining Indian tax exemption coupons to reservation motor fuel sellers on such nations' or tribes' qualified reservations. Only Indian nations or tribes or reservation motor fuel sellers on their qualified reservations may redeem such Indian tax exemption coupons pursuant to this section.

(b) The amount of Indian tax exemption coupons to be given to the recognized governing body of each Indian nation or tribe shall be based upon the probable demand of the qualified Indians on such nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use.

(i) Probable demand shall be determined by reference to, among other data, the United States average motor fuel and Diesel motor fuel consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected Indian nation or tribe.

(ii) In making a determination of probable demand, the department shall take into consideration any evidence submitted by such recognized governing body relating to such probable demand (e.g., a verified record of previous sales to qualified Indians or other statistical evidence) and/or relating to the amount needed for such nation's or tribe's official use.

(c) Each Indian tax exemption coupon shall consist of a retention portion for a distributor's recordkeeping purposes and a redemption portion for a distributor's submission to the department when claiming a refund as set forth in paragraph (a) of subdivision four of this section, and shall contain the following information:

- (i) the identity of the Indian nation or tribe to which it is issued;
- (ii) the identity and the quantity of the product for which it is issued;
- (iii) the date of issuance and the date of expiration; and
- (iv) any other information as the commissioner may deem appropriate.

3. Tax exempt purchases. (a) An Indian nation or tribe may purchase motor fuel and Diesel motor fuel for its own official use or consumption from a distributor registered pursuant to this article without payment of the motor fuel tax or Diesel motor fuel tax to the extent that the Indian nation or tribe provides such distributor with Indian tax exemption coupons entitling the Indian nation or tribe to purchase such quantities of motor fuel and Diesel motor fuel as allowed for on each Indian tax exemption coupon without paying the motor fuel tax or Diesel motor fuel tax.

(b) A qualified Indian may purchase motor fuel and Diesel motor fuel for his or her own use or consumption without payment of the motor fuel tax or Diesel motor fuel tax, provided that the qualified Indian makes such purchase at a qualified reservation.

(c) A reservation motor fuel seller may purchase motor fuel and Diesel motor fuel for resale without payment of the motor fuel tax or Diesel motor fuel tax from a distributor registered pursuant to this article:

- (i) provided that such reservation motor fuel seller brings such motor fuel or Diesel motor fuel or causes it to be delivered onto a qualified reservation for resale on such reservation; and
- (ii) to the extent that such reservation motor fuel seller provides

such distributor with Indian tax exemption coupons entitling the reservation motor fuel seller to purchase such quantities of motor fuel and Diesel motor fuel as allowed for on each Indian tax exemption coupon without paying the motor fuel tax or Diesel motor fuel tax.

(d) A distributor shall not collect or pass through, as the case may be, the motor fuel tax or Diesel motor fuel tax from any purchaser to the extent the purchaser gives such distributor Indian tax exemption coupons entitling the purchaser to purchase such quantities of motor fuel or Diesel motor fuel as allowed for on each such Indian tax exemption coupon without paying the motor fuel tax or Diesel motor fuel tax.

4. Refunds and credits. (a) A distributor registered pursuant to this article who has one or more Indian tax exemption coupons may file a claim for refund or credit as provided for in section two hundred eighty-nine-c of this article with respect to any motor fuel tax or Diesel motor fuel tax it previously paid, assumed, or has had passed through to it on motor fuel or Diesel motor fuel it sold without passing through the tax because it accepted an Indian tax exemption coupon from its purchaser.

(b) A distributor of motor fuel or Diesel motor fuel shall report motor fuel or Diesel motor fuel sold to an Indian nation or tribe or a reservation motor fuel seller in its monthly return of tax on motor fuel or Diesel motor fuel and may deduct the quantity so sold in arriving at the net taxable gallonage to the extent such fuel was sold without passing through to such purchasers the motor fuel tax or Diesel motor fuel tax.

5. Tax agreements with Indian nations or tribes. If an Indian nation or tribe enters into an agreement with the state and the legislature approves such agreement regarding the sale and distribution of motor fuel or Diesel motor fuel on the nation's or tribe's qualified reservation, the terms of such agreement shall take precedence over the provisions of this article and exempt such nation from such taxes to the extent that such taxes are specifically referred to in the agreement, and the sale or distribution, including transportation, of any motor fuel or Diesel motor fuel to the nation's or tribe's qualified

reservation shall be in accordance with the provisions of such agreement.

§ 285. Special provision as to imposition of tax on certain motor fuel. If a person, firm, association or corporation shall receive any motor fuel in such form and under such circumstances as shall preclude the collection of such tax from a distributor by reason of the constitution and laws of the United States, and shall thereafter sell any such fuel in such manner and under such circumstances as may subject the fuel sold to the taxing power of this state, such person, firm, association or corporation shall be considered a distributor, with respect to such sale, and shall make the same reports, pay the same taxes and be subject to all other provisions of this article relating to distributors.

§ 285-a. Presumption of taxability. 1. No person shall purchase motor fuel in this state, excluding a purchase at retail, unless the taxes imposed by this article have been assumed by a distributor registered under this article in accordance with a certification under subdivision three of this section or paid by such distributor, and, in each of such instances, are passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases motor fuel without having received a certification from the seller in accordance with subdivision three of this section shall be jointly and severally liable to pay the taxes imposed by this article with respect to such motor fuel.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax on motor fuel imposed by and pursuant to this article, it shall be presumed that all motor fuel imported, manufactured or sold, received or possessed in the state is intended for use, distribution, storage or sale in the state and subject to the taxes imposed by this article until the contrary is established. It shall be further presumed that all motor fuel so imported, manufactured or sold, received or possessed in the state by any person, other than motor fuel

delivered into the ordinary fuel tank connected with the engine of a means of conveyance in order to propel it, or in small drums or similar containers, which such person cannot otherwise account for, is subject to the taxes imposed by this article and such person is responsible for payment of such taxes. Provided, however, a distributor of motor fuel who imports, manufactures or sells and stores in the state or who purchases and stores motor fuel in the state on which he has paid the taxes imposed by this article shall be allowed an adjustment in arriving at the gallons subject to the taxes imposed by such section on account of the gallons the distributor establishes were lost due to shrinkage, evaporation and handling; provided, however, such allowance shall not exceed two percent of the fuel stored. Provided, further, that in arriving at the gallons of motor fuel subject to the taxes imposed by this article, there shall be allowed an adjustment on account of gallons lost or destroyed due to an accident, such as fire, and at the time of such loss or destruction were being held or transported for sale other than at retail. The burden of proving that any motor fuel is not so subject shall be upon the person so responsible for such payment with respect to such fuel.

3. (a) Upon each sale of motor fuel, other than a sale at retail, the seller must give to the purchaser and the purchaser shall receive at the time of delivery of such motor fuel, a certification containing such information as the tax commission shall require which shall include a statement to the effect: (i) if such seller is a distributor registered under this article, that he assumed the payment of or paid the taxes imposed by this article and, in each case, is passing through such taxes; or (ii) that such seller is passing through such taxes which were so previously assumed or paid by an identified distributor registered under this article, and passed through to him.

(b) If the certification required by this subdivision has been furnished to the purchaser at delivery and accepted in good faith, the burden of proving that the taxes imposed by this article were assumed or paid by a distributor registered as such under this article and passed through shall be solely on the seller.

(c) Where the certification required under this paragraph is not furnished by the seller at delivery of motor fuel, it shall be presumed

that the taxes imposed by this article have not been assumed or paid by a distributor registered as such under this article and that the purchaser in such case is jointly and severally liable for such taxes.

(d) If, due to the circumstances of delivery, it is not possible to issue a certification required under this subdivision at the time of delivery of motor fuel, the tax commission may authorize the delivery of the certification required under this paragraph at a time after the delivery of the motor fuel which is the subject of the sale under the limited circumstances it shall prescribe and upon such terms and conditions it shall deem necessary to ensure collection of the taxes imposed by this article and the tax imposed by section eleven hundred two of this chapter.

* 4. Upon each sale of motor fuel, other than a sale that is otherwise exempt under this article, the distributor must charge the tax imposed by this article to the purchaser on each gallon sold. If the taxes imposed by this article have not already been assumed or paid by a distributor on any quantity of such fuel for any reason, including, but not limited to, the expansion of such fuel as a result of temperature fluctuation, the distributor must remit such taxes to the commissioner on the return for the period in which such sale was made.

* NB Effective September 1, 2023

§ 285-b. Presumption of taxability--Diesel motor fuel. 1. Except with respect to the exemptions from the excise tax on Diesel motor fuel set forth in subdivision three of section two hundred eighty-two-a of this article, no person shall purchase Diesel motor fuel in this state unless the taxes imposed by this article have been assumed by a registered distributor of Diesel motor fuel in accordance with a certification under subdivision four of this section or paid by such distributor and, in each of such instances, except in the case of an exemption from the pass through of such tax authorized in subdivision four of such section two hundred eighty-two-a, are passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases Diesel motor fuel without having received a certification from the seller in accordance with subdivision four of this section shall be jointly and severally liable to pay the taxes

imposed by this article with respect to such Diesel motor fuel.

2. For purposes of the proper administration of this article and to prevent evasion of the taxes imposed on Diesel motor fuel by this article, it shall be presumed that all Diesel motor fuel sold, received or possessed in the state is subject to the taxes imposed by this article until the contrary is established. It shall be further presumed that any person so selling, receiving or possessing such Diesel motor fuel is responsible for payment of the excise taxes on such fuel.

3. (a) The claim for or exemption from tax provided for in subparagraphs (i), (ii), (iii), (iv), and (vi) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this article shall be established by means of an exempt transaction certificate. If any such exemption is applicable, such certificate shall be provided by the purchaser to the seller at the time of or prior to delivery of the Diesel motor fuel. Such exempt transaction certificate shall set forth the name and address of the purchaser and the basis of the exemption and shall be signed by such purchaser and by the seller. Such certificate shall be in such form and contain such other information as the commissioner shall require. Where a proper and complete exempt transaction certificate has been furnished and accepted by the seller in good faith, such certificate under such circumstance shall relieve the seller of the burden of proving that the Diesel motor fuel covered by such certificate is exempt from tax by reason of subparagraph (i), (ii), (iii), (iv), or (vi) of paragraph (b) of subdivision three of such section two hundred eighty-two-a. Any purchaser who furnishes to his seller a false or fraudulent exempt transaction certificate for the purpose of establishing an exemption from the tax imposed by section two hundred eighty-two-a of this article shall be jointly and severally liable for the tax imposed by such section. In lieu of an exempt transaction certificate, the commissioner may provide for the establishment of such exemption by means of a procedure or other document which he or she deems appropriate so as to secure the revenues from the excise tax on Diesel motor fuel. Provided, further, in the case of the exemption provided by subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this article,

the commissioner shall provide for an alternative procedure or other document signed only by the seller, such as a metered delivery ticket, for the establishment of such exemption in those cases where such commissioner is satisfied that the use of such alternative procedure or other document will not jeopardize the revenues from the excise tax on Diesel motor fuel.

(b) A claim for the exemption from tax provided for in subparagraph (v) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this article shall be established by means of an interdistributor sale certificate. If such exemption is applicable, such certificate shall be provided by the purchaser to the seller at the time of or prior to delivery of the Diesel motor fuel. Such certificate shall set forth the name and address of the purchaser, the purchaser's registration number, an affirmation by such purchaser that the purchaser is registered as a distributor and that such registration has not been suspended or cancelled and shall be signed by such purchaser and by the seller. Such certificate shall be in such form and contain such other information as the commissioner shall require. Where a proper and complete interdistributor sale certificate has been furnished and accepted by the seller in good faith, such certificate under such circumstance shall relieve the seller of the burden of proving that the Diesel motor fuel covered by such certificate is exempt from tax by reason of subparagraph (v) of paragraph (b) of subdivision three of such section two hundred eighty-two-a. For purposes of this paragraph, a seller shall not have accepted such certificate in good faith if the purchaser's registration is invalid because it has been suspended or cancelled, or if the purchaser is not registered, and the commissioner has furnished registered distributors with information identifying all those persons then validly registered as distributors of Diesel motor fuel and those persons whose registrations have been suspended or cancelled. Any purchaser who furnishes to his seller a false or fraudulent interdistributor sale certificate for the purpose of establishing an exemption from the tax imposed by section two hundred eighty-two-a of this article shall be jointly and severally liable for the tax imposed by such section.

4. (a) Upon each sale, other than a retail sale not in bulk, the

seller must give to the purchaser and the purchaser shall receive at the time of delivery of such Diesel motor fuel, a certification containing such information as the commissioner of taxation and finance shall require which, unless otherwise provided in this paragraph, shall include a statement to the effect: (i) if such seller is a distributor registered under this article, that he has assumed the payment of or paid the taxes imposed by this article and, in each case, is passing through such taxes; or (ii) that such seller is passing through such taxes which were so previously assumed or paid by an identified distributor registered under this article, and passed through to him. In the case of a transaction described in paragraph (a) or (b) of subdivision three of section two hundred eighty-two-a of this article which is exempt from the imposition of the taxes imposed on Diesel motor fuel or where the seller, pursuant to and in accordance with subdivision four of such section, has not passed through such taxes to the purchaser, the certificate, in lieu of either of the foregoing statements, shall state that, based upon good faith reliance on an exempt transaction certificate (or such other similar document or procedure prescribed by the commissioner of taxation and finance), an interdistributor sales certificate or the exemption document provided by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter, as the case may be, such motor fuel is being sold under the circumstances described in such paragraph (a) or (b) of subdivision three of section two hundred eighty-two-a or, in the case of the exemption from the pass through, is being sold under the circumstances specified in subdivision four of such section and that the taxes imposed by this article are not applicable or are not being passed through, as the case may be.

(b) In the case of a sale of Diesel motor fuel subject to the excise taxes and in all cases where the excise taxes are required to be passed through, if the certification required by this subdivision has been furnished to the purchaser at the time of delivery of such fuel and accepted in good faith, the burden of proving that the taxes imposed by this article were assumed or paid by a distributor registered as such under this article and passed through shall be solely on the seller.

(c) Where the certification required under this subdivision is not furnished by the seller at the time of delivery of the Diesel motor

fuel, it shall be presumed that the taxes imposed by this article are due and owing and have not been assumed or paid by a distributor registered as such under this article and that the purchaser in such case is jointly and severally liable for such taxes.

(d) If, due to the circumstances of delivery, it is not possible to issue a certification required under this subdivision at the time of delivery of Diesel motor fuel, the commissioner of taxation and finance may authorize the delivery of the certification required under this subdivision at a time after the delivery of the Diesel motor fuel which is the subject of the sale under the limited circumstances it shall prescribe and upon such terms and conditions it shall deem necessary to ensure collection of the taxes imposed by this article and the tax imposed by section eleven hundred three of this chapter.

* 5. Upon each sale of Diesel motor fuel, other than a sale that is otherwise exempt under this article, the distributor must charge the tax imposed by this article to the purchaser on each gallon sold. If the taxes imposed by this article have not already been assumed or paid by a distributor on any quantity of such fuel for any reason, including, but not limited to, the expansion of such fuel as a result of temperature fluctuation, the distributor must remit such taxes to the commissioner on the return for the period in which such sale was made.

* NB Effective September 1, 2023

§ 286. Records to be kept by distributors and others. 1. Every person who imports or causes to be imported into this state, or who produces, refines, manufactures or compounds within this state, or who purchases or sells in this state motor fuel or diesel motor fuel or ingredients which may be manufactured or compounded into motor fuel or diesel motor fuel, shall keep a complete and accurate record of all purchases and sales, uses or other dispositions thereof and a complete and accurate record of the number of gallons of motor fuel or diesel motor fuel or such ingredients so imported, produced, refined, manufactured or compounded. Every person who stores motor fuel or diesel motor fuel shall keep a complete and accurate record of the identity of the person for whom such fuel is stored, the quantity and type of fuel so stored, the identity of the person to whom such fuel is released from storage

and the quantity and type of fuel so released. Such records shall be in such form and contain such other information as the commissioner shall prescribe. Said commissioner, by rule or regulation, also may require the delivery of statements to purchasers with consignments of motor fuel or diesel motor fuel or such ingredients, and prescribe the matters to be contained therein. Such records and statements, unless required by the commissioner to be preserved for a longer period, shall be preserved for a period of three years and shall be offered for inspection at any time upon oral or written demand by such commissioner or the commissioner's duly authorized agents. The commissioner is hereby further authorized to examine the equipment of any such person pertaining to the storage, sale or delivery of such fuels, as well as the stock of such fuels in the possession or control of such person. To verify the amount of tax due under this article, each such person is hereby directed and required to give to the commissioner or the commissioner's duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required. Nothing contained in this section shall be construed to require the keeping for purposes of this article of a record of purchases or sales of motor fuel or diesel motor fuel or such ingredients at retail in small quantities (less than thirty gallons) or of motor fuel or diesel motor fuel imported into this state in the tank of a motor vehicle which supplies the fuel for its operation.

2. The commissioner of taxation and finance may, by regulation, provide for the filing of monthly information returns by every person required to maintain such records, as prescribed in subdivision one of this section, which shall in all material respects reflect the information required to be contained in such records. Such returns shall be in such form and contain such other information as the commissioner shall require. In addition, such commissioner shall be authorized to require by regulation the keeping of records and the filing of information returns or reports by any person registered as the owner under the vehicle and traffic law of a motor vehicle using diesel motor fuel which is operated on the public highways of this state and the person having a registration issued pursuant to section four hundred fifteen of the vehicle and traffic law in the case of a motor vehicle

operated under such registration.

3. The commissioner shall provide for the filing of monthly information returns by every distributor and every person registered as a "retail seller of aviation gasoline" required to maintain such records, as prescribed in subdivision one of this section, which shall in all material respects reflect the information required to be contained in such records. Such returns shall be in such form and contain such other information as the commissioner shall require, provided, the commissioner shall permit the filing of such return on a quarterly basis by distributors whose only sales of diesel motor fuel are sales to consumers solely for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this article and by persons registered under this article as distributors of kero-jet fuel only.

§ 286-a. Records and reports of transportation of motor fuel and diesel motor fuel. Every person transporting motor fuel or diesel motor fuel within this state, whether such transportation originates within or without this state, when required by the commissioner, shall keep a true and accurate record of all motor fuel and diesel motor fuel so transported, including ingredients which may be manufactured or compounded into motor fuel or diesel motor fuel, showing such facts with relation to such fuel and ingredients and their transportation as the commissioner may require. Such record shall be open to inspection by the representatives of the department at any time and the commissioner may require from any such person sworn returns of all or any part of the information shown by such records.

§ 286-b. Transportation of motor fuel or diesel motor fuel; manifest required. 1. The master or other person in charge of any barge, tanker or other vessel in which motor fuel or diesel motor fuel is being transported over any of the navigable waters of this state, the operator of a motor vehicle in which motor fuel or diesel motor fuel is being transported in this state, or the operator of a pipeline through which

motor fuel or diesel motor fuel is being transported in this state, other than motor fuel or diesel motor fuel being transported for use in operating the engine which propels such vessel or motor vehicle, as the case may be, must have in his or her possession a manifest which shows the name and address of the person from whom such fuel was received by him or her and the place of receipt of such fuel and the name and address of every person to whom he or she is to make delivery of the same and the place of delivery, together with the number of gallons to be delivered to each such person, and, if such fuel is being imported into the state in such vessel, motor vehicle or pipeline for use, storage, distribution or sale in the state, the name of the distributor importing or causing such fuel to be imported into the state and such other information as the commissioner may require pursuant to rule or regulation, and shall at the request of a peace officer, acting pursuant to his or her special duties, a police officer, any representative of the department or any other person authorized by law to inquire into or investigate the transportation of such fuel, produce such manifest for inspection. The person causing the operation of such vessel, motor vehicle or pipeline shall be responsible to cause the operator of such vessel, motor vehicle or pipeline to keep in his or her possession on such vessel, in such motor vehicle or in the main control building of such pipeline in this state the manifest required by this section. The absence of the manifest required by this section shall give rise to a presumption that the motor fuel or diesel motor fuel being transported is intended for sale, use, distribution or storage in this state and is being imported or caused to be imported by other than a registered distributor. Moreover, the absence of (1) the place of delivery of motor fuel or diesel motor fuel on the manifest with respect to motor fuel or diesel motor fuel being imported into the state shall give rise to a presumption that such fuel is being imported into the state for use, distribution, storage or sale in the state and (2) the name of a registered distributor on the manifest with respect to motor fuel or diesel motor fuel being imported into the state for use, distribution, storage or sale in the state shall give rise to a presumption that such fuel is being so imported or caused to be imported by other than a registered distributor. Every barge, tanker or other vessel so used for the transportation of motor fuel must be plainly and visibly marked on

both sides thereof and above the water line with the word "Gasoline," or other name of the motor fuel being transported, in letters at least eight inches high and of corresponding appropriate width, or must be identified as prescribed by the commissioner pursuant to rule or regulation. The master or person in charge of such barge, tanker or other vessel, as well as the owners thereof, shall be guilty of a violation of this section if such barge, tanker or other vessel is not so marked.

2. The commissioner may, by regulation provide for the form and content of the manifest required for motor and diesel motor fuel and for the filing of monthly information returns by every person required to maintain records, described in subdivision one of this section, which shall in all material respects reflect the information required to be contained in such records. Such returns shall be in such form and contain such other information as the commissioner shall require.

§ 287. Payment of tax; returns. 1. Every distributor shall, on or before the twentieth day of each month, file with the department a return, on forms to be prescribed by the commissioner and furnished by such department, stating the number of gallons of motor fuel imported, manufactured or sold by such distributor in the state during the preceding calendar month and in the case of Diesel motor fuel, the number of gallons of Diesel motor fuel imported and the number of gallons which have been sold or used. Provided, however, the commissioner may, if he or she deems it necessary in order to ensure the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as he or she may deem necessary, and, by regulation, may permit the filing of returns by distributors of Diesel motor fuel on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a distributor of Diesel motor fuel for such time and upon such terms as he or she may deem proper if satisfied that no tax imposed by this article with respect to Diesel motor fuel is or will be payable by him or her during the time for which returns are waived. Such returns shall contain such further information as the commissioner shall require. The fact that a distributor's name is signed

to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such distributor. Each such distributor shall, with respect to motor fuel, pay to the department with the filing of such return, the taxes imposed by this article on each gallon of motor fuel imported, manufactured or sold by such distributor in the state, and so reported, during the period covered by such return. Each distributor shall, with respect to Diesel motor fuel, pay to the department with the filing of the return the taxes imposed by this article on the number of gallons of Diesel motor fuel sold or used or delivered to a filling station or delivered into the fuel tank of a motor vehicle during the period covered by the return. Provided, however, that where a distributor has purchased motor fuel or diesel motor fuel upon which the taxes imposed by this article have been paid or paid over and in each instance the tax is included in the price, a credit shall be allowed for the amount of such taxes upon the subsequent sale of such fuel to the extent that such taxes are so paid and included in the price.

2. A distributor entitled to a refund under the provisions of section two hundred eighty-nine-c of this chapter, in lieu of such refund, may take credit therefor on a return filed pursuant to this section, unless the commissioner shall withdraw such privilege.

3. Every wholesaler of motor fuel shall, on or before the twentieth day of each month, file with the department a return, on forms prescribed by the commissioner stating the number of gallons of motor fuel purchased and sold by such wholesaler in the state during the preceding calendar month. For each purchase and sale, the date, number of gallons of motor fuel purchased or sold, and the name of the seller or purchaser shall be set forth on the return. Such returns shall contain such further information as the commissioner shall require. The fact that a wholesaler's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such wholesaler of motor fuel.

§ 288. Determination of tax. 1. (a) Except as otherwise provided in

this section, if a distributor files a return under this article, but such return is incorrect or insufficient, the state tax commission shall determine the amount of tax due at any time within three years after the return was filed (whether or not such return was filed on or after the due date), and give written notice of such determination to the distributor. For the purposes of this section the term distributor shall also include any other person liable for the taxes imposed by this article.

(b) The tax commission shall determine the liability for the penalty imposed by subdivision two of section two hundred eighty-nine-b of any officer, director, shareholder or employee of a corporation or of a dissolved corporation, member or employee of a partnership or employee of an individual proprietorship. The tax commission shall also determine the amount of such penalty. All of the provisions of this section shall apply to any determination made pursuant to this paragraph and for such purpose the term distributor, as used in subdivisions four, five and six of this section, shall also mean and include such officer, director, shareholder, employee or member as the case may be.

(c) The tax commission shall determine the liability for the penalty imposed by paragraph (e) of subdivision one of section two hundred eighty-nine-b of any person as an owner of a filling station. The tax commission shall also determine the amount of such penalty. All of the provisions of this section shall apply to any determination made pursuant to this paragraph and for such purpose the term distributor, as used in subdivisions four, five and six of this section, shall also mean and include such person.

(d) The provisions of paragraphs (b) and (c) of this subdivision shall not be construed to limit in any manner the powers of the attorney general under subdivision one of section two hundred eighty-nine of this chapter or the powers of the tax commission to issue a warrant under subdivision two of such section against any person whose liability has become finally and irrevocably fixed.

2. The state tax commission may determine the amount of tax due at any time if such distributor (i) has not registered as required by this article, (ii) fails to file a return, (iii) files a willfully false or fraudulent return with intent to evade the tax, or (iv) fails to comply

with section two hundred eighty-three of this article in not informing the department, in writing, of any change in its address and, if a corporation or partnership, in not informing the department, in writing, of any change in its officers, directors or partners or their residence addresses as shown in its application for registration.

3. If a distributor shall inform the department, in writing, of any change in its address and, if a corporation or partnership shall inform the department, in writing, of any change in its officers, directors or partners or their residence addresses as shown in its application for registration, the determination of the amount of tax due may be made at any time within three years after such information is received.

4. Notwithstanding any of the foregoing provisions of this section, where, before the expiration of the time prescribed in this section for the determination of tax, both the tax commission and the distributor have consented in writing to its determination after such time, the tax may be determined at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

5. Any determination made pursuant to this section shall finally and irrevocably fix the tax unless the distributor against whom it is assessed shall, within ninety days after the giving of notice of such determination, petition the division of tax appeals for a hearing, or unless the commissioner of taxation and finance of his own motion, shall redetermine the same. After such hearing, the division of tax appeals shall give notice of the determination of the administrative law judge to the distributor liable for the tax and to the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter, but the proceeding may not be commenced unless the amount of tax stated or referred to in the decision, with penalties and interest thereon, if any, and the amount of any other penalty stated or referred to in the decision shall have been

first deposited with the commissioner of taxation and finance, and an undertaking filed with him, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the decision confirmed, the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding, or at the option of the petitioner such undertaking may be in a sum sufficient to cover the tax, penalties, interest, costs and charges aforesaid, in which event the petitioner shall not be required to pay such tax, penalties and interest as a condition precedent to the commencement of the proceeding.

6. The remedy provided by this section for review of a decision of the tax appeals tribunal shall be the exclusive remedy available to any taxpayer to judicially determine the liability of such taxpayer for taxes under this article.

§ 288-a. Jeopardy assessments. If the tax commission believes that the collection of any tax will be jeopardized by delay it may determine the amount of such tax and assess the same, together with all interest and penalties provided by law, against any person liable therefor prior to the filing of his return and prior to the date when his return is required to be filed. The amount so determined shall become due and payable to the tax commission by the person against whom such a jeopardy assessment is made, as soon as notice thereof is given to him personally or by registered or certified mail. The provisions of section two hundred eighty-eight of this article shall apply to any such determination except to the extent that they may be inconsistent with the provisions of this section. The tax commission shall abate any jeopardy assessment if it finds that jeopardy does not exist. The collection of any jeopardy assessment may be stayed by filing with the tax commission a bond issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, or such other security acceptable to the tax commission, conditioned upon payment of the amount assessed and interest thereon, or any lesser amount to which such assessment may be reduced by the tax commission or by a proceeding under

article seventy-eight of the civil practice law and rules as provided in section two hundred eighty-eight of this article, such payment to be made when the assessment or any such reduction thereof shall have become final and not subject to further review. If such a bond is filed and thereafter a proceeding under article seventy-eight is commenced as provided in subdivision five of section two hundred eighty-eight of this article, deposit of the taxes, penalties and interest assessed shall not be required as a condition precedent to the commencement of such proceeding. Where a jeopardy assessment is made, any property seized for the collection of the tax shall not be sold (1) until expiration of the time to apply for a hearing as provided in section two hundred eighty-eight of this article, and (2) if such application is timely filed, until the expiration of four months after the tax commission has given notice of its determination to the person against whom the assessment is made; provided, however, such property may be sold at any time if such person has failed to attend a hearing of which he has been duly notified, or if he consents to the sale, or if the tax commission determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

§ 289. Proceedings to recover tax. Whenever any distributor shall fail to pay, within the time limited herein, any tax which he is required to pay under the provisions of this article, the attorney-general shall, upon the request of the department of taxation and finance, enforce payment of such tax by civil action in the supreme court, in the name of the people of the state, against such distributor for the amount of such tax, with interest. The proceeds of the judgment, if any, shall be paid to the department of taxation and finance.

Whenever any distributor shall fail to pay, within the time limited herein, any tax which he is required to pay under the provisions of this article, the tax commission may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such distributor, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to

return such warrant to the department of taxation and finance and to pay to it the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the distributor mentioned in the warrant, and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the distributor against whom the warrant is issued. Such lien shall not apply to personal property unless such warrant is also filed in the department of state. The said sheriff shall thereupon proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the tax commission shall have the same remedies to enforce the claim for taxes, penalties and interest against the distributor as if the people of the state had recovered judgment against such distributor for the amount of the tax.

§ 289-a. Tax to be paid but once; foreign and interstate commerce; injunction. Nothing in this article shall be construed to require the payment to the department of taxation and finance of such tax more than once on any quantity of motor fuel sold within the state. No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States constitution and to laws of the United States enacted pursuant thereto. The supreme court shall have jurisdiction to restrain the department, by injunction, from collecting

a tax under this article upon any sale as to which, by reason of the United States constitution and the laws of the United States enacted pursuant thereto, such a tax cannot be imposed.

§ 289-b. Penalties and interest. 1. (a) A distributor or other person who or which fails to file a return or to pay any tax within the time required by or pursuant to this article (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of ten per centum of the amount of tax determined to be due as provided in this article plus one per centum of such amount for each month or fraction thereof during which such failure continues after the expiration of the first month after such return was required to be filed or such tax became due, not exceeding thirty per centum in the aggregate. Provided, however, in the case of a failure to file such return within sixty days of the date prescribed for filing of such return by or pursuant to this article (determined with regard to any extension of time for filing), the penalty imposed by this paragraph shall not be less than the lesser of one hundred dollars or one hundred per centum of the amount required to be shown as tax on such return. For the purpose of the preceding sentence, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) If any amount of tax is not paid on or before the last date prescribed in this article for payment, interest on such amount at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

(c) If the tax commission determines that such failure or delay was due to reasonable cause and not due to willful neglect, it shall remit all or part of such penalty. The tax commission shall promulgate rules and regulations as to what constitutes reasonable cause.

(d) If the failure to pay any tax within the time required by or pursuant to this article is due to fraud, in lieu of the penalties and interest provided for in paragraphs (a) and (b) of this subdivision, there shall be added to the tax (i) a penalty of two times the amount of tax due, plus (ii) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter for the period beginning on the last day prescribed by this article for the payment of such tax (determined without regard to any extension of time for paying) and ending on the day on which such tax is paid.

(e) Any owner of a filling station who shall willfully and knowingly have in his custody, possession or under his control any motor fuel or Diesel motor fuel on which (i) the taxes imposed by or pursuant to the authority of this article have not been assumed or paid by a distributor registered as such under this article or (ii) the taxes imposed by or pursuant to the authority of this article, which taxes were required to have been passed through to him and included in the cost to him of such fuel, have not been included in the cost to him of such fuel shall be liable for a penalty equal to twice the amount of tax so not assumed or paid, or included. Such penalty shall be determined, assessed, collected and paid in the same manner as taxes imposed by this article and all the provisions of this article relating to determination of tax, proceedings to recover tax, refunds (but only of monies paid in error), mailing rules and disposition of revenue shall be deemed also to refer to the penalty imposed by this paragraph and, for this purpose, the term "owner of a filling station" shall be substituted for the term "distributor" wherever appearing in such provisions. Such penalty may be determined at any time within three years after such motor fuel or Diesel motor fuel shall have come into the custody, possession or control of such owner of a filling station. For purposes of this paragraph, such owner shall willfully and knowingly have in his custody, possession or under his control any motor fuel or Diesel motor fuel (1) on which such taxes have not been assumed or paid by a distributor registered as such or (2) on which such taxes are required to have been passed through to him and have not been included in his cost when such owner has known of the requirement that such taxes be so included and where to his knowledge such taxes have not been so included. For purposes of this paragraph, it

shall be presumptive evidence that such owner shall willfully and knowingly have in his custody, possession or under his control any motor fuel or Diesel motor fuel (1) on which such taxes have not been assumed or paid by a distributor registered as such or (2) on which such taxes are required to have been passed through to him and have not been included in his cost where such owner has not received the certification required by subdivision three of section two hundred eighty-five-a or, in the case of Diesel motor fuel, by subdivision four of section two hundred eighty-five-b of this article at the time of delivery of such motor fuel or Diesel motor fuel, or, in those circumstances where the commissioner has authorized the delivery of the certification at a time after delivery of the motor fuel or Diesel motor fuel, at the time prescribed by the commissioner.

(e-1) In addition to any other penalties that may be imposed by law, any of the following penalties may be imposed.

(i) Any person who fails to file an informational return under this article on or before the prescribed date, must pay a penalty of fifteen hundred dollars for the first violation and a penalty of three thousand dollars for each subsequent violation, unless it can be shown that such failure is due to reasonable cause and not willful neglect.

(ii) Any person who fails to file an informational return within sixty days of the date prescribed for filing must pay a penalty of two thousand dollars for the first violation and a penalty of four thousand dollars for each subsequent violation, unless it can be shown that such failure is due to reasonable cause and not willful neglect.

(iii) Any person who fails to file a complete informational return must pay a penalty of fifteen hundred dollars for the first violation and a penalty of three thousand dollars for each subsequent violation, unless it can be shown that such failure is due to reasonable cause and not willful neglect.

(iv) If any person makes a statement on an informational return and, as of the time of the statement, there was no reasonable basis for that statement, that person must pay a penalty of two thousand dollars for the first violation and a penalty of four thousand dollars for each subsequent violation.

(f) The penalties and interest provided for in this section shall be determined, assessed, collected and paid in the same manner as the taxes

imposed by this article and shall be disposed of as hereinafter provided with respect to moneys derived from the tax. Unpaid penalties and interest under this subdivision may be recovered by the attorney-general by action in the name of the people, and all penalties and interest due from the same distributor may be sued for in one action. Interest under this subdivision shall be compounded daily.

2. Any officer, director, shareholder or employee of a corporation or of a dissolved corporation, any employee of a partnership or any employee of an individual proprietorship, who as such officer, director, shareholder or employee is under a duty to act for such corporation, partnership or proprietorship in complying with any requirement of this article, and any member of a partnership, which fails to pay the taxes imposed by or pursuant to this article, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax not paid, plus penalties and interest computed pursuant to subdivision one of this section as if such person were a distributor. If the tax commission determines that such failure was due to reasonable cause and not due to willful neglect, it shall remit all or part of such penalty imposed under this subdivision. Such penalty shall be determined, assessed, collected and paid in the same manner as the taxes imposed by this article and shall be disposed of as hereinafter provided with respect to moneys derived from the tax.

3. For purposes of this chapter, the failure to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the department of taxation and finance in Albany. For purposes of this chapter, the certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this article, or that a claim for refund has been filed, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, that such information has not been supplied, or that such claim has been filed.

4. Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

5. (a) Any purchaser of Diesel motor fuel who knowingly issues a false or fraudulent exempt transaction certificate (or a similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate in order to claim an exemption from the taxes imposed on Diesel motor fuel by this article by reason of an exemption from tax provided for in paragraph (b) of subdivision three of section two hundred eighty-two-a of this article, shall, in addition to liability for tax or any other penalty imposed by this chapter, be subject to a penalty of one hundred percent of the tax liability which would have resulted if there had not been a misuse of such certificate.

(b) Any seller of Diesel motor fuel who knowingly accepts from a purchaser a false or fraudulent exempt transaction certificate (or a similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate which claims an exemption from the taxes imposed on Diesel motor fuel by this article by reason of the exemption from tax provided for in such paragraph (b) of subdivision three of section two hundred eighty-two-a of this article shall, in addition to liability for tax or any other penalty imposed by this chapter, be subject to a penalty of one hundred percent of the tax liability which would have resulted if such certificate had not been so accepted.

§ 289-c. Refunds. 1. The tax imposed by this article though payable by the distributor, shall be borne by the purchaser and when paid by the distributor shall be deemed to have been so paid for the account of the purchaser. No person shall sell, advertise, or offer for sale motor fuel, separate from the tax herein imposed; and the price paid by the purchaser for motor fuel on which the tax has been paid, if such price be not less than the amount of the tax thereon, shall be presumed for the purposes of this section to have included the tax.

1-a. (a) Any person selling motor fuel to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or

consumption or selling kero-jet fuel to an airline for use in its airplanes may exclude the amount of the tax or taxes imposed by this article from the selling price thereof.

(b) (i) Any person registered as a distributor of motor fuel selling aviation gasoline to a fixed base operator registered under this article as a "retail seller of aviation gasoline" may exclude the amount of the tax or taxes imposed by this article from the selling price thereof where such aviation gasoline is delivered to the fixed base operator's premises and placed in a storage facility used exclusively for the purpose of fueling airplanes. The commissioner may register as a "retail seller of aviation gasoline" a fixed base operator who makes no sales of aviation gasoline other than retail sales not in bulk delivered directly into the fuel tank of an airplane and who makes no sales of motor fuel other than the foregoing described retail sales of aviation gasoline delivered directly into the fuel tank of airplanes (provided, in no event, shall kero-jet fuel be construed to constitute motor fuel). Such registration shall apply only to the wholesale purchase of only aviation gasoline by such "retail seller of aviation gasoline" and the retail sale by such person of aviation gasoline not in bulk for delivery directly into the fuel tank of an airplane for use in the operation thereof. In no event shall the registration as a "retail seller of aviation gasoline" be deemed to be an authorization to import, or cause to be imported, motor fuel including aviation gasoline, into this state. All the provisions of section two hundred eighty-three-a (except subdivision one) of this article shall be applicable to the registration of "retail sellers of aviation gasoline" with the same force and effect as if the language of such section had been incorporated in full herein and had expressly referred to the registration of "retail sellers of aviation gasoline", with such modification as may be necessary in order to adapt the language so as to apply to the registration of applicants for and persons registered as "retail sellers of aviation gasoline". Provided, however, that if the commissioner is satisfied that certain requirements of such foregoing provisions with respect to registration are not necessary in order to protect tax revenues, the commissioner may waive, limit or modify such requirements with respect to the registration of "retail sellers of aviation gasoline". The department, where applicable, shall coordinate the registration process with respect

to a fixed base operator applying for registration as a "retail seller of aviation gasoline" and as a distributor of kero-jet fuel only with the purpose of eliminating any duplicative information or procedures required of the applicant. Every person registered as a "retail seller of aviation gasoline" shall keep complete and accurate records of purchases and sales of aviation gasoline (including individual invoices identifying each purchase or sale of aviation gasoline) to and from such "retail seller of aviation gasoline". The commissioner shall, if it is determined to be appropriate, establish a requirement that a certificate be given by a "retail seller of aviation gasoline" prior to the sale of aviation gasoline pursuant to this paragraph.

(ii) Any person registered as a distributor of motor fuel and also registered as a "retail seller of aviation gasoline" may exclude the amount of the tax or taxes imposed by this article from the selling price thereof on such retail sale of aviation gasoline.

(c) (i) Any person making a sale of motor fuel under the circumstances described in paragraph (a), or subparagraph (i) of paragraph (b) of this subdivision or making a sale of Diesel motor fuel under the circumstances described in subdivision four of section two hundred eighty-two-a of this article whereby the tax or taxes imposed by this article have not been passed through to the purchaser, shall be allowed a refund or credit of the tax or taxes imposed by this article in the amount of such tax or taxes paid by such person on such motor fuel or Diesel motor fuel being sold or included in the price paid by such person for such fuel. Claims for refunds or credits shall be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as he may prescribe.

(ii) Any airline registered as a distributor of motor fuel who imports aviation gasoline into this state for use in its airplanes and a distributor described in subparagraph (ii) of paragraph (b) of this subdivision shall be allowed a refund or credit of the tax or taxes imposed by this article in the amount of such tax or taxes paid by such person on such aviation gasoline so imported and used exclusively in the operation of its airplanes. The refund or credit shall accrue at the time the aviation gasoline is delivered and stored as prescribed in subparagraph (i) of paragraph (b) of this subdivision. Claims for refunds or credits shall be presented and refunds or credits shall be

made only as authorized by the commissioner, including documentary proof required to substantiate refund claims.

* (d)(i) Any person may exclude the amount of the tax or taxes imposed by this article on E85 from the selling price thereof where E85 is delivered to a filling station and placed in a storage tank of such filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle. Any person making a sale of E85 under the circumstances described herein, whereby the tax or taxes otherwise imposed by this article have not been passed through to the purchaser, shall be allowed a refund or credit of the taxes imposed by this article in the amount of such tax or taxes paid by such person on such E85 being sold or included in the price paid by such person for such fuel. Claims for refunds or credits shall be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as the commissioner may prescribe.

(ii) Any person may exclude twenty percent of the amount of the tax or taxes imposed by this article from the selling price with respect to any sale of B20. Any person making a sale of B20 upon which such person does not pass on more than eighty percent of the taxes otherwise imposed by this article, where such person has purchased such B20 with the entire amount of the taxes imposed by this article included in such person's purchase price, shall be entitled to a refund or credit equal to the amount of the tax or taxes paid under this article on such B20 in excess of eighty percent of the tax or taxes imposed by this article on diesel motor fuel. Claims for refunds or credits shall be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as the commissioner may prescribe.

(iii) Any person may exclude the amount of the tax or taxes imposed by this article on CNG or hydrogen from the selling price thereof. Any person making a sale of CNG or hydrogen, whereby the tax or taxes otherwise imposed by this article have not been passed through to the purchaser, shall be allowed a refund or credit of any taxes imposed by this article in the amount of such tax or taxes paid by such person on such CNG or hydrogen being sold or included in the price paid by such person for such CNG or hydrogen. Claims for refunds or credits shall be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as the commissioner

may prescribe.

* NB Repealed September 1, 2031

2. However, the intention of this article is to place the ultimate burden resulting from such tax, so far as possible, on persons who use the public highways of the state for operating motor vehicles thereon, or who use the waterways of the state including any other waterways bordering on the state for operating pleasure or recreational motor boats thereon, and the following refunds are provided to that end, subject to the provisions of subdivision five of this section.

3. (a) Except as otherwise provided in paragraph (b) of this section, any person who shall buy any motor fuel or diesel motor fuel, on which the tax imposed by this article shall have been paid, and shall consume the same in any manner except in the operation of a motor vehicle upon or over the public highways of this state, or in the operation of a pleasure or recreational motor boat upon or over the waterways of the state including waterways bordering on the state, shall be reimbursed the amount of such tax in the manner and subject to the conditions herein provided except that there shall be no reimbursement of tax paid on motor fuel or diesel motor fuel taken out of this state in a fuel tank connected with the engine of a motor vehicle and consumed outside of this state.

(b) Any omnibus carrier which shall buy any motor fuel on which the aggregate tax imposed by section two hundred eighty-four and section two hundred eighty-four-a of this chapter, or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a and section two hundred eighty-two-b of this chapter, shall have been paid, shall be reimbursed, in the case of such motor fuel, the amount paid pursuant to such sections two hundred eighty-four and two hundred eighty-four-a in excess of four cents per gallon, and in the case of diesel motor fuel, the amount paid pursuant to such sections two hundred eighty-two-a and two hundred eighty-two-b in excess of six cents per gallon, provided such motor fuel or diesel motor fuel has been consumed by such carrier in the operation of an omnibus in this state. Any taxicab licensee, as defined by subdivision ten of section two hundred eighty-two of this chapter, who or which shall buy any motor fuel on

which the aggregate tax imposed by section two hundred eighty-four and section two hundred eighty-four-a of this chapter or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a and section two hundred eighty-two-b of this chapter, shall have been paid, shall be reimbursed, in the case of such motor fuel, the amount paid pursuant to such sections two hundred eighty-four and two hundred eighty-four-a in excess of four cents per gallon, and in the case of diesel motor fuel, the amount paid pursuant to such sections two hundred eighty-two-a and two hundred eighty-two-b in excess of six cents per gallon, provided such motor fuel or diesel fuel has been consumed by such licensee in the operation of a taxicab in this state.

(c) All claims for reimbursement shall be in such form and contain such information as the commissioner shall prescribe and shall be filed within three years from (i) the date of the purchase, in the case of the purchaser; or (ii) the date of the sale, in the case of the seller, of the motor fuel so subject to reimbursement. Every such claim shall include a certificate by or on behalf of the party presenting the same to the effect that it is just, true and correct, that no part thereof has been paid, except as stated therein, and that the balance therein stated is actually due and owing. The claimant shall satisfy the department that the claimant has borne the tax and that the motor fuel has been consumed by the claimant in a manner other than the operation of a motor vehicle upon or over the public highways of this state, the operation of a pleasure or recreational motorboat upon or over the waterways of the state including waterways bordering on the state or, in the case of an omnibus carrier, taxicab licensee, nonpublic school operator or volunteer ambulance service, that the claimant has borne the tax and that the amount claimed is the amount of such tax reimbursable under paragraph (b), (d), (e) or (f) of this subdivision. The department may require such further information or proof as it shall deem necessary for the administration of such claim. Claims for reimbursement approved by the department shall be paid from revenues collected under this article and deposited to the credit of the comptroller as hereinafter provided; but no such claims shall be paid unless the department is satisfied that the amount of the tax for which the reimbursement is claimed has actually been collected by the state. The amount of any erroneous or excessive payment to a claimant for reimbursement may be

determined by the department and may be recovered from such claimant in the same manner as a tax imposed by this article, provided, however, that any such determination shall be made within three years after the date of such erroneous or excessive payment.

(d) Any omnibus carrier which shall buy motor fuel on which the aggregate tax imposed by section two hundred eighty-four, section two hundred eighty-four-a and section two hundred eighty-four-c of this chapter or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a, section two hundred eighty-two-b and section two hundred eighty-two-c of this chapter shall have been paid, shall be reimbursed the amount paid provided such motor fuel or diesel motor fuel has been consumed by such carrier in the operation of an omnibus in local transit service in this state pursuant to a certificate of convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city.

(e) Any nonpublic school operator which shall buy motor fuel on which the aggregate tax imposed by section two hundred eighty-four, section two hundred eighty-four-a and section two hundred eighty-four-c of this chapter or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a, section two hundred eighty-two-b and section two hundred eighty-two-c of this chapter shall have been paid, shall be reimbursed the amount paid provided such motor fuel or diesel motor fuel has been consumed by such nonpublic school operator exclusively in educational related activities.

(f) Any voluntary ambulance service, as defined in section thirty hundred one of the public health law, which shall buy motor fuel on which the tax or taxes imposed by this article shall have been paid shall be reimbursed the amount of such tax in the manner and subject to the conditions herein set forth, provided such motor fuel has been consumed by such volunteer ambulance service vehicle in the course of operating within the state.

(g) An organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such

subdivision, or a fire company or fire department, as defined in section three of the volunteer firefighters' benefit law, or a volunteer rescue squad supported in whole or in part by tax money where any such entity is the purchaser, user or consumer of motor fuel or diesel motor fuel in a vehicle owned and operated by it and used exclusively for its purposes, or an airline where it has purchased kero-jet fuel for use in its airplanes shall be reimbursed the amount of the taxes on motor fuel and diesel motor fuel imposed by or pursuant to the authority of this article included in the price paid for such motor fuel or diesel motor fuel.

(h) Notwithstanding any provision of the law to the contrary, tax paid pursuant to this article in respect to motor fuel or diesel motor fuel purchased by a government entity and paid for by such government entity with a credit card shall be reimbursed or credited to the issuer of the credit card used for such purchase or the fuel distributor designated in accordance with and subject to the provisions of sections eleven hundred thirty-eight, eleven hundred thirty-nine, eleven hundred forty-two, and eleven hundred forty-five of this chapter concerning such credit card issuers, fuel distributors and government entities. Such provisions shall apply with respect to the administration of and procedure with respect to the taxes imposed under this article in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this article and had expressly referred to the tax under this article, with such modifications as may be necessary in order to adapt the language of such provisions to the taxes imposed by this article, except to the extent that any such provision is not relevant to this article.

5. If the provisions of this section providing for reimbursement of the amount of the tax paid be held unconstitutional by a court of competent jurisdiction, the other constitutional provisions of this article nevertheless shall stand, it being the express intention of the legislature that even though such provision for reimbursement be held unconstitutional the tax provided for by this article shall be imposed, collected and distributed as provided in this article, regardless in that event of the manner in which the motor fuel is consumed.

6. Moneys paid in error under this article may be refunded. Where motor fuel, upon which the tax imposed by this article has been paid, is sold, under such circumstances that, if the tax had not been paid, the sale would not have been taxable under this article, the tax may be refunded. Refunds shall be made only as authorized by the commissioner under such rules and regulations as the commissioner may prescribe provided an application therefor is filed with the commissioner within three years from the time the erroneous payment was made, or tax paid motor fuel was so sold. Refunds authorized by the commissioner shall be paid from revenues collected under this article and deposited to the credit of the comptroller as hereinafter provided.

7. If an agreement under the provisions of section two hundred eighty-eight (extending the period for determination of tax imposed by this article) is made within the three-year period for the filing of an application for refund under subdivision six of this section or, in the case of a claim for reimbursement under subdivision three of this section, if such agreement is made within three years from the date of purchase or sale (as the case may be) of the motor fuel, the period for filing an application for refund or a claim for reimbursement shall not expire prior to six months after the expiration of the period within which determination may be made pursuant to the agreement or any extension thereof.

8. With respect to motor fuel imported, manufactured or sold or purchased in this state, and with respect to the sale or use of Diesel motor fuel, a refund or credit shall be allowed a distributor or a purchaser of the tax required to be paid pursuant to this article upon such motor fuel or Diesel motor fuel in the amount of such tax paid by or included in the price paid by a distributor or such purchaser to the seller thereof if such fuel was exported from this state for sale or use outside this state, such distributor or such purchaser, as the case may be, exporting such fuel is duly registered with or licensed by the taxing authorities of the state to which such fuel is exported as a distributor or a dealer in the fuel being so exported, and in connection with such exportation such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and the applicant

complies with all requirements and rules and regulations of the commissioner, including evidentiary requirements, relating thereto; and provided further that upon receipt of a claim for refund in processible form, interest shall be allowed and paid at the overpayment rate set by the commissioner pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter from the due date of the return to the date immediately preceding the date of the refund check except no such interest shall be allowed or paid if the refund check is mailed within thirty days of such receipt and except no interest shall be allowed or paid if the amount thereof would be less than one dollar. For the purpose of this article, "export" from this state shall in no event be construed to include motor fuel or diesel motor fuel taken out of this state in the fuel tank connected with the engine of a motor vehicle or any conveyance and consumed in the operation thereof outside of this state.

9. With respect to any organization described in paragraph four of subdivision (a) of section eleven hundred sixteen of this chapter which is eligible pursuant to this section for reimbursement of the tax required to be paid pursuant to this article, upon receipt of a claim for reimbursement in processible form, interest shall be allowed and paid at the overpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter from the date of the application for reimbursement to the date immediately preceding the date of the reimbursement check except no such interest shall be allowed or paid if the reimbursement check is mailed within forty-five days of such receipt and except no interest shall be allowed or paid if the amount thereof would be less than one dollar. Provided, however, the department shall process applications for reimbursement as expeditiously as possible.

§ 289-d. Mailing rules; holidays. 1. Except as otherwise provided in this subdivision, if any return, claim, statement, notice, application or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is,

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

2. Any notice authorized or required under this article may be given by mailing it to the person for whom it is intended, in a postpaid envelope addressed to such person at the address given by him in his application for registration as a distributor or in the last return filed by him under this article or, if no application or return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of its receipt by the person to whom addressed. Any period of time, which is determined according to the provisions of this article, for the giving of notice shall commence to run from the date of mailing of such notice.

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

holiday.

4. (a) Any reference in subdivision one of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision one of this section to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner finds that any delivery service designated by such secretary is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this article, or may withdraw any such designation if the commissioner finds that a delivery service so designated is inadequate for the needs of the state. Any reference in subdivision one of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner and any reference in subdivision one of this section to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner.

(b) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision one of this section. If the commissioner finds that any equivalent of registered or certified mail designated by such secretary or the commissioner is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article.

§ 289-e. Deposit and disposition of revenue. 1. All taxes, interest, penalties and fees collected or received by the commissioner under the taxes imposed by this article, except as provided otherwise in subdivision two and subdivision three of this section and sections two hundred eighty-two-b, two hundred eighty-two-c, two hundred eighty-four-a and two hundred eighty-four-c, other than the fee imposed by section two hundred eighty-four-d and penalties and interest on such fee, shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter; provided that an amount equal to thirty-seven and one-half per centum of the moneys collected under section two hundred eighty-four of this chapter shall be appropriated and used for the acquisition of property necessary for the construction and reconstruction of highways and bridges or culverts on the state highway system, and for the construction, maintenance and repair of such highways and bridges or culverts, all under the direction of the commissioner of transportation.

2. All taxes, interest, penalties and fees collected or received by the commissioner of taxation and finance after March thirty-first, nineteen hundred ninety-three under the taxes imposed by section two hundred eighty-four of this article shall be deposited in the dedicated highway and bridge trust fund and disposed of pursuant to section eighty-nine-b of the state finance law.

3. Subject to the provisions of section one hundred seventy-one-a of this chapter relating to refunds and reimbursements, all taxes, interest, penalties and fees collected or received by the commissioner after March thirty-first, two thousand, under the taxes imposed by section two hundred eighty-two-a of this article shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

§ 289-f. Joint administration of taxes. In addition to the powers granted to the commissioner in this chapter, the commissioner is hereby authorized to make provisions pursuant to rules and regulations for the joint administration, in whole or in part, of the state and local taxes

imposed by article twenty-eight and authorized to be imposed by article twenty-nine of this chapter upon the sale of motor fuel or diesel motor fuel and the taxes imposed and authorized to be imposed by this article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the commissioner's functions under such articles, and any returns, forms, statements, documents or information to be submitted to the commissioner under such articles, any books and records to be kept for purposes of the taxes imposed or authorized to be imposed by such articles, any schedules of amounts to be collected under such articles, any registration required under such articles, and the payment of taxes under such articles shall be on a joint basis with respect to the taxes imposed by such articles.

ARTICLE 13

TAX ON UNRELATED BUSINESS INCOME

Section 290. Imposition of tax.

290-A. Tax surcharge.

291. Meaning of terms.

292. Unrelated business taxable income.

293. Allocation of unrelated business taxable income.

294. Returns and payment of tax.

295. Procedural provisions.

296. Deposit and disposition of revenue.

§ 290. Imposition of tax. (a) General. For every taxable year or part thereof, every organization described in paragraph two of subsection (a) of section five hundred eleven of the internal revenue code of nineteen hundred fifty-four and every trust described in paragraph two of subsection (b) of section five hundred eleven of such code carrying on an unrelated trade or business in New York shall pay a tax at the rate of nine per centum on its unrelated business taxable income for such year, or on the portion thereof allocated to this state, as provided in section two hundred ninety-three, or two hundred fifty dollars, whichever is greater.

(b) Unrelated trade or business carried on by a receiver. Any receiver, referee, trustee, assignee or fiduciary, or any officer or agent appointed by any court, who carries on the unrelated trade or business of an organization or trust described in either paragraph two of subsection (a) or paragraph two of subsection (b) of section five hundred eleven of the internal revenue code of nineteen hundred fifty-four shall be subject to the tax imposed by this article in the same manner and to the same extent as if the unrelated trade or business were carried on by the agents, officers or trustees of such organization or trust.

(c) Exemptions. (1) Every corporation liable to tax under article nine-a of this chapter shall not be subject to tax under this article.

(2) Every organization whose sole unrelated trade or business carried on in New York consists of activities constituting an unrelated trade or business solely by virtue of section 501(m)(2)(A) of the internal revenue code shall not be subject to tax under this article.

(3) Any income derived from the conduct of games of chance or from rental of premises for the conduct of games of chance pursuant to a license granted under article nine-A of the general municipal law shall not be subject to tax under this article.

§ 290-A. Tax surcharge. 1. In addition to the tax imposed under section two hundred ninety of this article, there is hereby imposed, for taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-seven, a tax surcharge at the rate of fifteen percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four, and until such rate is superseded; at the rate of ten percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five, and until such rate is superseded; at the rate of five percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six, and until such rate is superseded; and at the rate of zero percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred

ninety-seven, of the tax imposed under section two hundred ninety of this article. However, the tax surcharge imposed by this section at the rate of fifteen percent shall not be imposed upon any taxpayer for more than forty-eight months, and the tax surcharge imposed by this section at the rates of ten percent, five percent and zero percent shall not, respectively, be imposed upon any taxpayer for more than twelve months, and the commissioner shall prescribe by regulation or instructions a method of proration designed to effectuate such result.

1-a. Insofar as subdivision one of this section establishes a rate of fifteen percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four and until such rate is superseded, a rate of ten percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five and until such rate is superseded, a rate of five percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six and until such rate is superseded, and a rate of zero percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, the transition from such rate of fifteen percent to such rate of ten percent, from such rate of ten percent to such rate of five percent, and from such rate of five percent to such rate of zero percent, shall be deemed to occur, respectively, on the first day of the seventh month of each of such taxable years, with the result that for purposes of implementation of such changes in rates, and notwithstanding such subdivision one, there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five, including taxable years of fewer than twelve months, a tax surcharge at the rate of twelve and one-half percent; there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six, including taxable years of fewer than twelve months, a tax surcharge at the rate of seven and one-half percent; and there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-six and before July

first, nineteen hundred ninety-seven, including taxable years of fewer than twelve months, a tax surcharge at the rate of two and one-half percent. In addition, for purposes of implementation of all the provisions of this section references to ten percent shall be read as references to twelve and one-half percent, references to five percent shall be read as references to seven and one-half percent and references to zero percent shall be read as references to two and one-half percent.

2. The provisions concerning returns under section two hundred ninety-four of this article shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a return covering the taxes imposed by this article, such automatic extension shall be allowed, for taxable years to which the tax surcharge imposed by this section applies, only if a taxpayer files with the commissioner an application for extension in such form as the commissioner may prescribe, and pays on or before the date of such filing, in addition to any other amounts required under this article, fifteen percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four, ten percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five, five percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six, and zero percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, of the amount properly estimated as provided in section two hundred ninety-four of this article as its tax payable under section two hundred ninety of this article. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the return is required to be filed.

3. Except as otherwise provided in this section, all of the provisions of this article shall apply to the tax surcharge imposed by this section with such modifications as may be necessary to adapt such language to the tax surcharge imposed by this section. Such provisions shall apply with the same force and effect as if those provisions had been set forth

in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax surcharge imposed by this section, and to that end a reference in this article to the tax surcharge imposed by section two hundred ninety shall be read as a reference to the tax surcharge imposed by this section, and to the sum of such tax and such tax surcharge in the case of those provisions requiring such reading in order to effectuate the purposes of this provision, unless a different meaning is clearly required.

§ 291. Meaning of terms. (a) Any terms used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time for the taxable year.

(b) The term "taxpayer" means an organization or trust described in section two hundred ninety.

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

§ 292. Unrelated business taxable income. (a) The unrelated business taxable income of a taxpayer subject to the tax imposed by section two hundred ninety shall be such taxpayer's federal unrelated business taxable income, as defined in the laws of the United States for the taxable year, with the following modifications:

(1) There shall be added to federal unrelated business taxable income the amount of any tax imposed under this article.

(2) There shall be subtracted from federal unrelated business taxable

income the amount of any refund or credit for overpayment of a tax imposed under this article or article twenty-three of this chapter.

(3) The net operating loss deduction which shall be allowed shall be the same as the net operating loss deduction allowed under paragraph six of subsection (b) of section five hundred twelve of the internal revenue code of nineteen hundred fifty-four, except that

(A) any net operating loss included in determining such deduction shall be adjusted to reflect the addition and subtraction from unrelated business taxable income required by paragraphs one and two of this subdivision,

(B) such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, nineteen hundred seventy, or during any taxable year in which the taxpayer was not subject to the tax imposed by this article, and

(C) such deduction shall not exceed the deduction for the taxable year allowable under paragraph six of subsection (b) of section five hundred twelve of the internal revenue code of nineteen hundred fifty-four.

(4) There shall be subtracted from federal unrelated business taxable income any amount which is included therein solely by reason of the application of section 501(m)(2)(A) or 512(a)(7) of the internal revenue code.

(5) Shareholders of S corporations. (A) In the case of a shareholder of an S corporation,

(i) where the election provided for in subsection (a) of section six hundred sixty of this chapter is in effect with respect to such corporation, there shall be added to federal unrelated business taxable income an amount equal to the shareholder's pro rata share of the corporation's reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, and

(ii) where such election has not been made with respect to such corporation, there shall be subtracted from federal unrelated business taxable income any items of income of the corporation included therein, and there shall be added to federal unrelated business taxable income any items of loss or deduction included therein, and

(iii) in the case of a New York S termination year, the amount of any such items of S corporation income, loss, deduction and reductions for

taxes shall be adjusted in the manner provided in paragraph two or three of subsection (s) of section six hundred twelve of this chapter.

(B) In the case of a shareholder of a corporation which was, for any of its taxable years beginning after nineteen hundred ninety-seven, a federal S corporation but a New York C corporation:

(i) There shall be added to federal unrelated business taxable income S corporation distributions to the extent not included therein because of the application of section thirteen hundred sixty-eight or subsection (e) of section thirteen hundred seventy-one of the internal revenue code, which represent income not previously subject to tax under this article because the election provided for in subsection (a) of section six hundred sixty of this chapter had not been made. Any such distribution treated in the manner described in paragraph two of subsection (b) of such section thirteen hundred sixty-eight shall be treated as ordinary income for purposes of this article.

(ii) Where gain or loss is included in unrelated business taxable income upon the disposition of stock or indebtedness of such corporation,

(I) there shall be added to unrelated business taxable income the amount of increase in basis of such stock or indebtedness with respect to such New York C years of the corporation, pursuant to subparagraphs (A) and (B) of paragraph one of subsection (a) of section thirteen hundred sixty-seven of such code, and

(II) there shall be subtracted from unrelated business taxable income the amount of decrease in such basis with respect to such New York C years of the corporation, pursuant to subparagraphs (B) and (C) of paragraph two of subsection (a) of such section thirteen hundred sixty-seven, and

(III) there shall be subtracted from unrelated business taxable income the amount of modifications to unrelated business taxable income with respect to such stock pursuant to clause (i) of subparagraph (B) of this paragraph.

(C) Cross reference. For definitions relating to S corporations, see subdivision one-A of section two hundred eight of this chapter.

(6) Related members expense add back. (A) Definitions. (i) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four

hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(ii) Effective rate of tax. "Effective rate of tax" means, as to any state or U.S. possession, the maximum statutory rate of tax imposed by the state or possession on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or U.S. possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(iii) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(iv) Valid business purpose. A valid business purpose is one or more business purposes other than the avoidance or reduction of taxation which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase

in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(B) Royalty expense add backs. (i) For the purpose of computing New York unrelated business taxable income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal unrelated business taxable income;

(ii) Exceptions. (I) The adjustment required in this paragraph shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, meets all of the following requirements: (a) the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (b) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (c) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(II) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (a) the related member was subject to tax on or measured by its net income in this state or another state or possession of the United States or some combination thereof; (b) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (c) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section two hundred ninety of this article for the taxable year.

(III) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (a) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (b) the related member's income from the transaction was subject to a comprehensive income tax

treaty between such country and the United States; (c) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (d) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this state; and (e) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

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

(7) The amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code must be added to federal unrelated business taxable income.

(8) There must be added to federal unrelated business taxable income the amount of any federal deduction for taxes imposed under article twenty-three of this chapter.

(b) If the period covered by a return under this article is other than the period covered by the return to the United States treasury department, unrelated business taxable income shall be determined by multiplying the unrelated business taxable income reported to such department (as modified pursuant to the provisions of this article) by the number of calendar months or major parts thereof covered by the return under this article and dividing by the number of calendar months or major part thereof covered by the return to such department. If it shall appear that such method of determining unrelated business taxable income does not properly reflect the taxpayer's income during the period covered by the return under this article, the tax commission shall be authorized, in its discretion, to determine such income solely on the basis of the taxpayer's income during the period covered by its return under this article.

§ 293. Allocation of unrelated business taxable income. (a) The portion of the unrelated business taxable income of a taxpayer to be allocated within this state shall be determined by multiplying its unrelated business taxable income by an allocation percentage to be determined by:

(1) ascertaining the percentage which the average value of the taxpayer's real and tangible personal property in its unrelated trade or business within the state during the period covered by the taxpayer's return bears to the average value of all the taxpayer's real and tangible personal property wherever situated during such period which is used in its unrelated trade or business (For purposes of this paragraph, the taxpayer's real property shall include not only such property owned by the taxpayer but also such property rented to it.);

(2) ascertaining the percentage which the receipts of the taxpayer's unrelated trade or business, computed on the cash or accrual basis according to the method of accounting used in the computation of the taxpayer's unrelated business taxable income, arising during such period from

(A) sales of tangible personal property by the unrelated trade or business where shipments are made to points within this state,

(B) services performed within the state by the unrelated trade or business,

(C) rentals from property of the unrelated trade or business situated within the state, and

(D) all other receipts earned by the unrelated trade or business within the state, bear to the total amount of the receipts of the unrelated trade or business, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals and all other transactions, whether within or without the state;

(3) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of employees of the taxpayer's unrelated trade or business within the state, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period of all employees of the unrelated trade or business within and without the state, except general executive officers; and

(4) adding together the percentages so determined and dividing the

result by the number of percentages; provided, however, that if the taxpayer does not have a regular place of business outside the state in which its unrelated trade or business is conducted, the business allocation percentage shall be one hundred percent.

(b) If it shall appear to the tax commission that the allocation percentage determined in subdivision (a) of this section does not properly reflect the activity, business or income of a taxpayer's unrelated trade or business within the state, the tax commission shall be authorized, in its discretion, to adjust it by (1) excluding one or more of the factors therein, (2) including one or more other factors, such as expenses, purchases, contract values (minus subcontract values), (3) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining unrelated business taxable income or (4) any other similar or different method calculated to effect a fair and proper allocation of the income reasonably attributable to this state. The tax commission from time to time shall publish all rulings of general interest with respect to any application of the provisions of this subdivision.

§ 294. Returns and payment of tax. (a) Every taxpayer and every other organization or trust, other than an employee's trust described in section four hundred one (a) of the internal revenue code of nineteen hundred fifty-four, which is subject to the federal tax on unrelated business income having an officer, agent, trustee or representative within the state shall, on or before the fifteenth day of the fifth month following the close of each of its taxable years, make and file a return with the tax commission setting forth such information as the tax commission may prescribe. Every employee's trust described in section four hundred one (a) of such code shall make and file a return with the tax commission on or before the fifteenth day of the fourth month following the close of the trust's taxable year. Every taxpayer which ceases to be subject to the tax imposed by this article shall make and file a return with the tax commission on the date of such cessation, or at such other time which the tax commission may require, covering each taxable year or period for which no return was theretofore filed, setting forth such information as the tax commission may require. Every

taxpayer shall also file such other returns and furnish such other facts and information as the tax commission may require in the administration of this article.

(b) (1) An automatic extension of six months for the filing of its annual return shall be allowed any taxpayer, if, within the time prescribed by the preceding paragraph, such taxpayer files with the tax commission an application for extension, in such form as said tax commission may prescribe by regulation, and pays, on or before the date of such filing, the amount properly estimated as its tax, as provided in paragraph two of this subdivision.

(2) If a taxpayer, within the time prescribed by subdivision (a) of this section, shall have applied for an automatic extension of time to file its annual return and shall have paid to the commissioner of taxation and finance on or before the date such application is filed an amount properly estimated as hereinafter provided in this subdivision, the only amount payable in addition to the tax shall be interest, at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six per cent per year, upon the amount by which the tax, or the portion thereof payable on or before the date the return was required to be filed (determined without regard to any extension of time for filing such return), exceeds the amount so paid. For purposes of this subdivision an amount so paid shall be deemed properly estimated if it is either not less than ninety per cent of the tax as finally determined, or not less than the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months.

(c) The tax imposed by section two hundred ninety shall be payable to the tax commission in full at the time the return is required to be filed. Such tax imposed on any taxpayer which ceases to be subject to the tax imposed by this article shall be payable to the tax commission at the time the return is required to be filed and all other taxes of any such taxpayer, which pursuant to the provisions of this section would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time.

(d) The tax commission may grant a reasonable extension of time for filing a return or for payment of a tax imposed by this article under

such conditions as it deems just and proper.

§ 295. Procedural provisions. The provisions of section two hundred eleven, except subdivisions one, four and nine thereof, the provisions of subdivision three of section two hundred sixteen, and the provisions of section two hundred nineteen of this chapter and the provisions of article twenty-seven of this chapter, shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article, and except that the term "report" shall be read as "return", the term "taxable income" shall be read as "unrelated business taxable income" and the terms "corporation" and "foreign corporation" shall be read as "taxpayer".

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

ARTICLE 13-A

TAX ON PETROLEUM BUSINESSES

Section 300. General definitions.

301-a. Imposition of tax.

301-b. Exemptions.

301-c. Reimbursement.

301-d. Utility credit or reimbursement.

301-e. Aviation fuel business.

301-h. Tax relating to carriers.

301-j. Supplemental petroleum business tax and supplemental tax on aviation gasoline component of aviation fuel business tax.

- 301-l. Refund for tax with respect to in-bulk consumer bad debt.
- 301-m. Credit or reimbursement for certain governmental purchases by credit card.
- 302. Registration of petroleum businesses.
- 305. Exempt entities.
- 308. Returns and payment of tax.
- 310. Corporate petroleum businesses; collection of taxes and penalties.
- 312. Deposit and disposition of revenue.
- 313. Limitation of time.
- 314. Secrecy.
- 315. Practice and procedure.

§ 300. General definitions.--As used in this article:

(a) The term "corporation" includes a corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument. "Corporation" shall also include any corporation whose business is being conducted by any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court and any dissolved corporation which continues to conduct business.

(b) The term "petroleum business" means: (1) With respect to motor fuel, every corporation and unincorporated business (i) importing motor fuel or causing motor fuel to be imported into the state for use, distribution, storage or sale in the state, or (ii) producing, refining, manufacturing or compounding motor fuel in the state. Provided, however, a corporation or unincorporated business which has been issued a liquefied petroleum gas fuel permit under section two hundred eighty-three-c of this chapter and which does not import motor fuel other than liquefied petroleum gas fuel or cause motor fuel other than liquefied petroleum gas fuel to be imported into the state for use, distribution, storage or sale in the state or produce, refine, manufacture or compound motor fuel other than liquefied petroleum gas fuel in the state shall not be considered a petroleum business with respect to motor fuel within the meaning of this paragraph. Motor fuel brought into this state in the ordinary fuel tank connecting with the

engine of a motor vehicle, airplane, or other conveyance, but not a vessel (other than a recreational motor boat or a commercial fishing vessel, as defined in subdivision (j) of this section, if the motor fuel imported into and consumed in this state is used to operate such vessel while it is engaged in the harvesting of fish for sale), propelled by the use of such motor fuel and to be used only in the operation thereof, shall not be deemed imported within the meaning of this article, if not removed from such tank except as used in the propulsion of such engine.

(2) With respect to diesel motor fuel, every corporation and unincorporated business (i) importing diesel motor fuel or causing diesel motor fuel to be imported into the state for use, distribution, storage or sale in the state, (ii) producing, refining, manufacturing or compounding diesel motor fuel within the state, (iii) making a sale or use of diesel motor fuel in the state, other than a retail sale not in bulk or self-use of diesel motor fuel which has been the subject of a retail sale to such corporation or unincorporated business, or (iv) registered by the department as a "distributor of kero-jet fuel only" pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter. Diesel motor fuel brought into this state in the ordinary fuel tank connecting with the engine of a motor vehicle, airplane or other conveyance, but not a vessel (other than a recreational motor boat or a commercial fishing vessel as defined in subdivision (j) of this section if the diesel motor fuel imported into and consumed in this state is used to operate such vessel while it is engaged in the harvesting of fish for sale), propelled by the use of such diesel motor fuel and to be used only in the operation thereof, shall not be deemed imported within the meaning of this article, if not removed from such tank except as used in the propulsion of such engine.

(3) With respect to residual petroleum product, every corporation and unincorporated business (i) importing residual petroleum product or causing residual petroleum product to be imported into the state for use, distribution, storage or sale in the state, (ii) producing, refining, manufacturing or compounding residual petroleum product in the state, or (iii) making a sale or use of residual petroleum product in the state other than a self-use of residual petroleum product which has been the subject of a retail sale to such corporation or unincorporated business.

(c) The terms (1) "diesel motor fuel" means such term as defined in subdivision fourteen of section two hundred eighty-two of this chapter, and

(2) "highway diesel motor fuel" means such term as defined in subdivision sixteen-a of section two hundred eighty-two of this chapter, and

(3) "non-highway diesel motor fuel" means such term as defined in subdivision sixteen of section two hundred eighty-two of this chapter.

(4) As used in this article, references to persons or petroleum businesses registered under article twelve-A of this chapter as distributors of diesel motor fuel shall include all such persons or petroleum businesses registered under such article as distributors of diesel motor fuel and persons or petroleum businesses operating under valid limited registrations relating to persons or petroleum businesses making retail sales of diesel motor fuel to consumers solely for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter, but such references shall not include persons and petroleum businesses registered as "distributors of kero-jet fuel only" pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter.

(d) The term "motor fuel" means such term as defined in subdivision two of section two hundred eighty-two of this chapter.

(e) The term "residual petroleum product" means the topped crude of refinery operations which includes products commonly designated by the petroleum refining industry as "No. 5 Fuel oil", "No. 6 Fuel oil" and "bunker C". It shall also include the special grade of diesel product specifically designated "No. 4 diesel fuel" and not suitable as a fuel used in the operation of a motor vehicle engine.

(f) The term "taxable month" means a calendar month or any part thereof during which a petroleum business is subject to tax under this article.

(g) The term "use" as applied to motor fuel and diesel motor fuel shall have the same meaning as set forth in subdivision (e) of section eleven hundred two of this chapter and such meaning shall also apply to residual petroleum product as if such subdivision specifically referred to the use of such residual product in addition to motor fuel and diesel motor fuel.

(h) The term "unincorporated business" means any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership, joint venture, sole proprietorship, unincorporated association, fiduciary, or a corporation in liquidation. The performance of services by an individual as an employee or as an officer or director of a corporation or unincorporated entity, or as a fiduciary, shall not be deemed an unincorporated business, unless such services constitute part of a business, trade or occupation regularly carried on by such individual.

(i) "commercial fisherman" means a person licensed by an appropriate federal or state agency for the purpose of engaging in the commercial harvesting of fish and who is engaged in the business of harvesting fish for sale. In determining whether or not a business is being conducted, consideration shall be given to the amount of time, capital and effort that is consumed by, as well as the percent of total gross income from all sources derived from the harvesting of fish for sale.

(j) "commercial fishing vessel" means a vessel which is used directly and predominantly in the harvesting of fish for sale and, if such vessel is required to be documented with the United States Coast Guard, it is currently documented with the United States Coast Guard and has a current fisheries endorsement on such documentation.

(k) "Commercial gallonage" means gallonage (1) which is non-highway diesel motor fuel or residual petroleum product, (2) which is included in the full measure of the non-highway diesel motor fuel component or the residual petroleum product component of the tax imposed under section three hundred one-a of this article, (3) which does not (and will not) qualify (A) for the utility credit or reimbursement provided for in section three hundred one-d of this article, (B) as "manufacturing gallonage", as such term is defined in subdivision (m) of this section, (C) for the not-for-profit organization exemption provided for in subdivision (h) of section three hundred one-b of this article, or (D) for the heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article, and (4) which will not be used nor has been used in the fuel tank connecting with the engine of a vessel. No gallonage shall qualify as "commercial gallonage" where

such gallonage is eligible for the (i) utility credit or reimbursement under such section three hundred one-d of this article, (ii) "manufacturing exemption" under paragraph three of subdivision (f) of section three hundred one-a of this article, (iii) not-for-profit organization exemption under subdivision (h) of section three hundred one-b of this article, or (iv) heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article. The commissioner shall require such documentary proof to substantiate the classification of product as "commercial gallonage" as the commissioner deems appropriate.

(l) "Railroad diesel" means non-highway diesel motor fuel for use and consumption directly and exclusively in the operation of a locomotive or a self-propelled vehicle run only on rails or tracks, but only if either (1) all such fuel is delivered into a storage facility which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such facility is used only to fuel such locomotives or such self-propelled vehicles, or (2) in accordance with the terms of sale, all such fuel is delivered directly into the tank of a locomotive or self-propelled vehicle. Provided, however, that a sale to a purchaser who will use such non-highway diesel motor fuel as "railroad diesel" shall be evidenced by a certificate signed by the purchaser stating that such diesel motor fuel will be used and consumed as prescribed in this subdivision and the commissioner may require such other information as the commissioner deems appropriate.

(m) "Manufacturing gallonage" means residual petroleum product or non-highway diesel motor fuel used and consumed directly and exclusively in the production of tangible personal property for sale by manufacturing, processing or assembly, but only if (i) all of such fuel or product is delivered on the manufacturing site, or (ii) the purchaser causes such fuel or product to be delivered to its manufacturing site. "Manufacturing gallonage" shall in no event be consumed on the public highways of this state or delivered at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle. The

commissioner shall require such documentary proof to substantiate the classification of product as "manufacturing gallonage" as the commissioner deems appropriate.

(n) The term "passenger commuter ferry" means a vessel providing mass transportation service. A vessel shall be providing mass transportation service (1) if it is recognized, as such, by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter, or (2) the commissioner designates such vessel as performing such service based on industry or regulatory practice.

* (o) The term "E85" shall have the same meaning as in subdivision twenty-two of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

* (p) The term "B20" shall have the same meaning as in subdivision twenty-three of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

* (q) The term "CNG" shall have the same meaning as in subdivision twenty-four of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

* (r) The term "hydrogen" shall have the same meaning as in subdivision twenty-five of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

(s) The term "terminal" shall have the same meaning as in subdivision thirteen of section two hundred eighty-two of this chapter.

§ 301-a. Imposition of tax. (a) General. Notwithstanding any other provision of this chapter, or of any other law, there is hereby imposed upon every petroleum business for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state, a monthly tax for each or any part of a taxable month equal to the sum of the motor fuel component determined pursuant to subdivision (b) of this section, the highway diesel motor fuel component determined pursuant to paragraph one of subdivision (c) of this section, the non-highway diesel motor fuel component determined pursuant to paragraph two of subdivision (c) of this section and the residual petroleum product component determined

pursuant to subdivision (d) of this section.

(b) Motor fuel component. (1) The motor fuel component shall be determined by multiplying the motor fuel and highway diesel motor fuel rate times the number of gallons of (1) motor fuel imported or caused to be imported into this state by the petroleum business for use, distribution, storage or sale in the state or (2) produced, refined, manufactured or compounded in the state by the petroleum business during the month covered by the return under this article. Provided, however, that no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution, nor shall any motor fuel be included in the measure of the tax imposed by this article more than once.

(2) Motor fuel brought into this state in the fuel tank connecting with the engine of a vessel propelled by the use of such motor fuel shall be deemed to constitute a taxable use of motor fuel for the purposes of this subdivision to the extent that the fuel is consumed in the operation of the vessel in this state. Provided, however, that this paragraph shall not apply to (i) a recreational motor boat or (ii) subsequent to August thirty-first, nineteen hundred ninety-four, a commercial fishing vessel (as defined in subdivision (j) of section three hundred of this article) if the motor fuel imported and consumed in this state is used to operate such vessel while it is engaged in the harvesting of fish for sale. Provided, further, that tax liability for gallonage that a vessel consumes shall be the tax liability with respect to the positive difference between the gallonage consumed in this state during the reporting period and the gallonage purchased in this state (upon which the tax imposed by this section has been paid) during such period. A credit or refund shall be available for any excess of tax liability for gallonage purchased in this state during the period over tax liability on gallonage so consumed in this state during such period, which excess shall be presumed to have been used outside this state.

(c) (1) Highway Diesel motor fuel component. (A) The highway diesel motor fuel component shall be determined by multiplying the motor fuel and highway diesel motor fuel rate times (1) the number of gallons of highway diesel motor fuel sold or used by a petroleum business in this state during the month covered by the return under this article and (2)

with respect to any gallonage which prior thereto has not been included in the measure of the tax imposed by this article, times the number of gallons of highway diesel motor fuel (i) removed from a terminal, other than by pipeline, barge, tanker or other vessel, (ii) delivered to a filling station or, (iii) delivered into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof, whichever of the latter three events shall be the first to occur. Provided, however, that no highway diesel motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution, nor decisional law, nor shall any highway diesel motor fuel be included in the measure of the tax imposed by this article more than once.

(B) Highway diesel motor fuel brought into this state in the fuel tank connecting with the engine of a vessel propelled by the use of such diesel motor fuel shall be deemed to constitute a taxable use of diesel motor fuel for the purpose of this paragraph to the extent of the fuel that is consumed in the operation of the vessel in this state. Provided, however, this paragraph shall not apply to (i) a recreational motor boat or (ii) a commercial fishing vessel (as defined in subdivision (j) of section three hundred of this article) if the highway diesel motor fuel imported into and consumed in this state is used to operate such commercial fishing vessel while it is engaged in the harvesting of fish for sale. Provided, further, that tax liability for gallonage that a vessel consumes in this state shall be the tax liability with respect to the positive difference between the gallonage consumed in this state during the reporting period and the gallonage purchased in this state (upon which the tax imposed by this section has been paid) during such period. A credit or refund shall be available for any excess of tax liability for gallonage purchased in this state during the period over tax liability on gallonage so consumed in this state during such period, which excess shall be presumed to have been used outside this state.

(2) Non-highway diesel motor fuel component. The non-highway diesel fuel component shall be determined by multiplying the non-highway diesel motor fuel rate times the number of gallons of non-highway diesel motor fuel sold or used by a petroleum business in this state during the month covered by the return under this section. Provided, however, that no

non-highway diesel motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution, nor shall any non-highway diesel motor fuel be included in the measure of the tax imposed by this article more than once.

(d) Residual petroleum product component. The residual petroleum product component shall be determined by multiplying the residual petroleum product rate times the number of gallons of residual petroleum product sold or used in this state by a petroleum business during the month covered by the return under this article. Provided, however, that no residual petroleum product shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution, nor shall any residual petroleum product be included in the measure of the tax imposed by this article more than once.

(e) Motor fuel and highway diesel motor fuel rate. (1) The basic motor fuel and highway diesel motor fuel rate shall be ten and two-tenths cents per gallon.

(2) Every year as of January first, the motor fuel and highway diesel motor fuel rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August of the immediately preceding year and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August in the year prior to such immediately preceding year, provided, however, that the adjusted rate shall not increase above or decrease below the rate in effect on the immediately preceding December thirty-first by more than five percent.

(3) Notwithstanding any other provision of this article, the per gallon rate with respect to "railroad diesel" shall be the adjusted motor fuel and highway diesel motor fuel rate under paragraphs one and

two of this subdivision minus one and three tenths cents per gallon.

(f) Non-highway diesel motor fuel rate.

(1) The basic non-highway diesel motor fuel rate shall be nine and three-tenths cents per gallon.

(2) Every year as of January first the non-highway diesel motor fuel rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: Such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August of the immediately preceding year and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August in the year prior to such immediately preceding year, provided, however, that the adjusted rate shall not increase above or decrease below the rate in effect on the immediately preceding December thirty-first by more than five percent.

(3) Notwithstanding any other provision of this article, non-highway diesel motor fuel which is "manufacturing gallonage," as such term is defined in subdivision (m) of section three hundred of this article, shall be exempt from the measure of the non-highway diesel motor fuel component of the tax imposed under this section.

(g) Residual petroleum product rate. (1) The basic residual petroleum product rate shall be four cents per gallon.

(2) Commencing April first, nineteen hundred ninety-one, the residual petroleum product rate shall be the product of the basic rate set forth in paragraph one of this subdivision multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of November, nineteen hundred ninety, and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of the labor statistics of the United States

department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of November, nineteen hundred eighty-nine.

(3) Commencing on the first day of January, nineteen hundred ninety-two, the residual petroleum product rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: Such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August, nineteen hundred ninety-one and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August, nineteen hundred ninety. Commencing on the first day of January of nineteen hundred ninety-six and every year thereafter, the residual petroleum product rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: Such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August of the immediately preceding year and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August in the year prior to such immediately preceding year, provided, however, that the adjusted rate to take effect on January first, nineteen hundred ninety-six and each January first thereafter shall not increase above or decrease below the rate in effect on the immediately preceding December thirty-first by more than five percent.

(4) Notwithstanding any other provision of this article, commencing January first, nineteen hundred ninety-eight, residual petroleum product

which is "manufacturing gallonage," as such term is defined in subdivision (m) of section three hundred of this article, shall be exempt from the measure of the residual petroleum product component of the tax imposed under this section.

(h) Publication and rounding of rate. (1) The commissioner shall cause to be published in the section for miscellaneous notices in the state register, and give other appropriate general notice of, the rate adjustment calculation and the resulting motor fuel and highway diesel motor fuel rate, non-highway diesel motor fuel rate and residual petroleum product rate fixed by this section for the period commencing on January first, two thousand twelve, and for each calendar year thereafter, no later than the immediately preceding first day of December. The calculation and publication of the rates of tax so fixed by provisions of this section shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(2) The rates determined pursuant to this section shall be rounded to the nearest one-tenth of one cent.

(i) Doing business, etc. Any petroleum business shall not be deemed to be doing business, engaging in business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of this article, by reason of (i) the maintenance of cash balances with banks or trust companies in this state, or (ii) the ownership of shares of stock or securities kept in this state, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (iii) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such petroleum business, or (iv) the maintenance of an office in this state by one or more officers or directors of the petroleum business (where such business is a corporation) who are not employees of the petroleum business if such petroleum business otherwise is not engaging in business or doing business in this state, and does not employ capital or own or lease property in this state, or (v) the keeping of books or records of a petroleum business in this state if

such books or records are not kept by employees of such petroleum business and such petroleum business does not otherwise engage in business, do business, employ capital, own or lease property or maintain an office in this state, or (vi) any combination of the foregoing activities.

(j) Special provision relating to lack of jurisdiction to tax. Notwithstanding any provision of law to the contrary, if a person shall receive any motor fuel in this state with respect to which this state was without power to impose the tax under this article, and such motor fuel thereafter becomes subject to the taxing power of this state, then the person possessing such motor fuel at such time shall be deemed a petroleum business and be liable for the tax under this article with respect to such motor fuel and shall make the same reports and returns, pay the same tax and be subject to all other provisions of this article relating to petroleum businesses with respect to motor fuel.

(l) Taxes imposed on qualified reservations. In furtherance of the joint administration of the taxes imposed by article twelve-A of this chapter and the taxes imposed by this article, the provisions of section two hundred eighty-four-e of this chapter concerning the sales of motor fuel and Diesel motor fuel on qualified Indian reservations shall apply to the payment and pass-through of the petroleum business tax in the same manner and with the same force and effect as if the provisions of such section had been incorporated in full into this article, except to the extent that any such provision is either inconsistent with a provision of this article or not relevant thereto.

(m) Special rate adjustment for certain vessels. Notwithstanding any provision of this section to the contrary, the use of non-highway diesel motor fuel in the engine of a vessel to propel such vessel shall be subject to tax at the motor fuel and highway diesel motor fuel rate provided for in this section, and shall be subject to the provisions of section three hundred one-j of this article, including the adjustment set forth in paragraph four of subdivision (a) of such section three hundred one-j. A credit or refund shall be available to the extent tax paid on gallonage used to propel any such vessel exceeds the amount of tax due based on the tax rate set forth herein. Provided, however, that the commissioner shall require such documentary proof to qualify for any credit or reimbursement provided hereunder as the commissioner deems

appropriate.

§ 301-b. Exemptions. The following gallonage otherwise includable in the measure of the tax imposed by section three hundred one-a of this article on a petroleum business shall be exempt from the measure of tax on such petroleum business:

(a) Products. (1) Kerosene sold or used by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel so long as (i) such product has not been blended or mixed with any other product constituting diesel motor fuel or motor fuel or a residual petroleum product and (ii) such product is not used by the petroleum business as fuel to operate a motor vehicle or sold by such petroleum business to a consumer for use as fuel to operate a motor vehicle.

(2) Kero-jet fuel (i) sold by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a consumer for use exclusively as jet aircraft fuel or to a petroleum business registered under such article twelve-A as a "distributor of kero-jet fuel only" where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane, (ii) used by a petroleum business, registered under article twelve-A of this chapter as a distributor of diesel motor fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in bulk by a petroleum business registered under article twelve-A of this chapter as a "distributor of kero-jet fuel only" where such fuel is delivered directly into the fuel tank of a jet airplane for use in the operation of such airplane.

(3) Aviation gasoline, meeting the specifications set forth in American Standard Testing Material Specification D910 or Military Specification MIL-G-5572, which is imported or caused to be imported into this state by a petroleum business which is registered under article twelve-A of this chapter as a distributor of motor fuel or produced, refined, manufactured or compounded in this state by such a petroleum business.

(4) Residual petroleum product sold by a petroleum business registered

under this article as a residual petroleum product business if such product is sold by such petroleum business to a consumer for use exclusively as bunker fuel for vessels or if such product is used by such petroleum business exclusively as bunker fuel in its own vessels.

(5) Liquefied petroleum gases, such as butane, ethane or propane.

* (6) E85 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business and delivered to a filling station and placed in a storage tank of such filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle.

* NB Repealed September 1, 2031

* (7)(i) Partial B20 exemption. B20 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business.

(ii) Calculation of partial exemption. The amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of B20 times twenty percent of the applicable taxes otherwise imposed by this article on such fuel.

* NB Repealed September 1, 2031

* (8) CNG or hydrogen.

* NB Repealed September 1, 2031

(b) Export. (1) Motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, where

(A) such petroleum business or the immediate purchaser of such motor fuel exports such motor fuel from this state for sale or use outside the state,

(B) such petroleum business or such purchaser, as the case may be, exporting such fuel is duly registered with or licensed by the taxing authorities of the state to which such fuel is exported as a distributor or a dealer in the product being so exported,

(C) in connection with the exportation, such fuel was immediately

shipped to an identified facility in the state to which such fuel is exported, and

(D) the rules and regulations of the commissioner of taxation and finance relating to evidentiary requirements are complied with.

(2) Highway diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, which is sold by such petroleum business to a purchaser who then exports such highway diesel motor fuel from this state for sale or use outside the state where

(A) such purchaser exporting such fuel is duly registered with or licensed by the taxing authorities of the state to which such fuel is exported as a distributor or a dealer in the product being so exported,

(B) in connection with the exportation, such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and

(C) the rules and regulations of the commissioner relating to evidentiary requirements are complied with.

(3) For the purpose of this article, "export" from this state shall in no event be construed to include motor fuel or diesel motor fuel taken out of this state in the fuel tank connected with the engine of a motor vehicle or any conveyance and consumed in the operation thereof outside of this state.

(c) Sales to New York state and the federal government. (1) Motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such motor fuel is used by such organization for its own use or consumption.

(2) Highway diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where

such highway diesel motor fuel is used by such organization for its own use or consumption.

(3) Non-highway Diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such non-highway diesel motor fuel is used by such organization for its own use or consumption.

(4) Residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such product is used by such organization for its own use or consumption.

(d) Sales to consumers for heating purposes. (1) Total residential heating exemption. Non-highway diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel.

(2) Partial non-residential heating exemption. (A) Non-highway diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for heating, other than residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel

(B) Calculation of partial exemption. The partial exemption under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax

imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific non-highway diesel motor fuel or residual petroleum product rate, as the case may be.

(e) Sales of highway diesel motor fuel, qualified biodiesel, non-highway diesel motor fuel and residual petroleum product to registered distributors of diesel motor fuel and registered residual petroleum product businesses.

(1) The sale of previously untaxed highway diesel motor fuel by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where the highway diesel motor fuel is either: (A) being delivered by pipeline, railcar, barge, tanker or other vessel to a terminal, the operator of which terminal is registered under section two hundred eighty-three-b of this chapter, or (B) within such a terminal where it has been so delivered. Provided, however, that the exemption set forth in this paragraph shall not apply to any highway diesel motor fuel if it is removed from a terminal, other than by pipeline, barge, tanker or other vessel.

(2) Qualified biodiesel and non-highway diesel motor fuel sold by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where such sale is not a retail sale or a sale that involves a delivery at a filling station or into a repository equipped with a hose or other apparatus by which such qualified biodiesel or non-highway diesel motor fuel can be dispensed into the fuel tank of a motor vehicle.

(3) Residual petroleum product sold by a person registered under this article as a residual petroleum product business to a person registered under this article as a residual petroleum product business where such sale is not a retail sale. Provided, however, that the commissioner may require such documentary proof to qualify for any exemption provided in this section as the commissioner deems appropriate, including the expansion of any certifications required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed by this article.

(4) "Qualified biodiesel" means such term as defined in subdivision twenty-three of section two hundred eighty-two of this chapter.

(f) Utilities. (1) Residual petroleum product and non-highway diesel motor fuel sold to an electric corporation, as described in subdivision (a) of section three hundred one-d of this article, which is registered with the department as a petroleum business tax direct pay permittee, and used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity where such electric corporation provides a copy of a direct pay permit authorized and issued by the commissioner, to the petroleum business making such sale. If so registered, such corporation shall be a taxpayer under this article and (i) such electric corporation shall file a return monthly and pay the applicable tax under this article, after the application of allowable credits, on all such purchases directly to the commissioner, (ii) such electric corporation shall be subject to all of the provisions of this article relating to the responsibilities and liabilities of taxpayers under this article with respect to such residual petroleum product and non-highway diesel motor fuel.

(2) If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner and the payment of tax on all product purchased pursuant to the permit shall be made directly to the commissioner by the permit holder. The commissioner may suspend or cancel a direct payment permit for any of the grounds for suspending or cancelling a registration pursuant to section three hundred two of this article and the notice and hearing provisions applicable under such section three hundred two of this article shall apply to the suspension and cancellation of direct payment permits.

(3) A sale to an electric corporation authorized to issue direct payment permits which furnishes a direct payment permit in proper form shall, with respect to the seller, not be subject to tax under this article unless such electric corporation's direct payment permit has been suspended or cancelled by the commissioner and the commissioner has provided petroleum businesses with information identifying persons whose direct payment permits have been suspended or cancelled or such seller has been provided information that the purchaser's direct payment permit has been cancelled or suspended. Where a seller accepts a direct payment permit from a person whose direct payment permit has been suspended or

cancelled, and the commissioner has provided petroleum businesses with information identifying those persons whose direct payment permits have been suspended or cancelled or where the seller has been provided information that the purchaser's direct payment permit has been suspended or cancelled, such sale shall be subject to tax at the full applicable rate.

(g) Sales or uses of non-highway diesel motor fuel and residual petroleum product for farm production. Non-highway Diesel motor fuel or residual petroleum product sold to or used by a consumer who purchases or uses such non-highway Diesel motor fuel or product for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all such non-highway Diesel motor fuel or product is delivered on the farm site and is consumed other than on the public highways of this state (except for the use of the public highway to reach adjacent farmlands).

(h) Exemption for certain not-for-profit organizations. There shall be exempt from the measure of the petroleum business tax imposed by section three hundred one-a of this article a sale or use of residual petroleum product, or non-highway diesel motor fuel to or by an organization which has qualified under paragraph four or five of subdivision (a) of section eleven hundred sixteen of this chapter where such non-highway diesel motor fuel or residual petroleum product is exclusively for use and consumption by such organization, but only if all of such non-highway diesel motor fuel or product is consumed other than on the public highways of this state. Provided, however, this exemption shall in no event apply to a sale of non-highway diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and all deliveries hereunder shall be made to the premises occupied by the qualifying organization and used by such organization in furtherance of the exempt purposes of such organization. Provided, however, that the commissioner shall require such documentary proof to qualify for any exemption provided herein as the commissioner deems appropriate. Provided, further, the distributor selling such non-highway Diesel motor fuel and product shall separately report on its return the gallonage sold during the reporting period exempt from tax under the provisions of

this subdivision and provide such other information with respect to such sales as the commissioner deems appropriate to prevent evasion.

(i) Exemption for passenger commuter ferries. A use by a passenger commuter ferry of non-highway diesel motor fuel or residual petroleum product where such non-highway diesel motor fuel or residual petroleum product was used and consumed by a passenger commuter ferry exclusively in providing mass transportation service. Provided, that the commissioner shall require such documentary proof to qualify for any exemption provided hereunder as the commissioner deems appropriate.

(j) Exemption for tugboats and towboats. The use by a tugboat or towboat of motor fuel, diesel motor fuel, or residual petroleum product. Provided, that the commissioner shall require such documentary proof to qualify for any exemption provided hereunder as the commissioner deems appropriate.

§ 301-c. Reimbursement. * A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), (j), (k), (n) or (o) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), (i), (l), (m) or (q) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

* NB Effective until September 1, 2031

* A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), (i), (l), (m) or (q) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

* NB Effective September 1, 2031

(a) Non-highway Diesel motor fuel used for heating purposes. (1) Total residential heating reimbursement. Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for residential heating purposes but only where (i) such non-highway diesel motor fuel is delivered into a storage tank which is

not equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner is authorized, in the event that the commissioner determines that it would not threaten the integrity of the administration and enforcement of the tax imposed by this article, to provide a reimbursement with respect to a retail sale to a consumer for residential heating purposes of less than ten gallons of non-highway diesel motor fuel provided such fuel is not dispensed into the tank of a motor vehicle.

(2) Partial non-residential heating reimbursement. (A) Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for heating, other than for residential heating purposes, but only where (i) such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article.

(B) Calculation of partial reimbursement. Notwithstanding any other provision of this article, the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article,

with respect to the non-highway diesel motor fuel rate, as the case may be.

(b) Sales to New York state and the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner of taxation and finance shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article.

(c) Motor fuel and diesel motor fuel used by certain omnibus carriers. Motor fuel and diesel motor fuel purchased in this state by an omnibus carrier and consumed by such omnibus carrier in the operation of an omnibus (i) in local transit service in this state, as described under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter, pursuant to a certificate of public convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city, or (ii) in the transportation of school children in the state under a contract made pursuant to the provisions of the education law. Provided, however, the reimbursement under this subdivision is available only where the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such omnibus carrier, where such omnibus carrier possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of

the entire amount of the tax imposed pursuant to this article, and where, in the case of the reimbursement under clause (i) of this subdivision, such motor fuel or diesel motor fuel is included in the gallonage upon which reimbursement is calculated under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter and, in the case of the reimbursement under clause (ii) of this subdivision, such motor fuel or diesel motor fuel is included in the gallonage upon which reimbursement is calculated under paragraph (b) of such subdivision three of section two hundred eighty-nine-c.

(d) Motor fuel and diesel motor fuel used by certain nonpublic school operators. Motor fuel and diesel motor fuel purchased in this state by a nonpublic school operator, as defined in subdivision eleven of section two hundred eighty-two of this chapter, and consumed by such nonpublic school operator exclusively in educational related activities. Provided, however, the reimbursement under this subdivision is available only where the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such nonpublic school operator, where such nonpublic school operator possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article, and where such motor fuel or diesel motor fuel is included in the gallonage upon which the reimbursement is calculated under paragraph (e) of subdivision three of section two hundred eighty-nine-c of this chapter.

(e) Non-highway Diesel motor fuel and residual petroleum product used for farm production. Non-highway Diesel motor fuel or residual petroleum product purchased in this state and sold by such purchaser to a consumer for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all of such non-highway Diesel motor fuel or product is delivered on the farm site and is consumed other than on the public highways of this state (except for the use of the public highway to reach adjacent farmlands). This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the

absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(f) Motor fuel and highway diesel motor fuel used for farm production. No more than one thousand five hundred gallons of motor fuel and no more than four thousand five hundred gallons of highway diesel motor fuel purchased in this state in a thirty-day period or a greater amount which has been given prior clearance by the commissioner, by a consumer for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all of such motor fuel or highway diesel motor fuel is delivered on the farm site and is consumed other than on the public highways of this state (except for the use of the public highway to reach adjacent farmlands). This reimbursement to such purchaser who used such motor fuel or highway diesel motor fuel in the manner specified in this subdivision may be claimed only where, (i) the tax imposed pursuant to this article has been paid with respect to such motor fuel or highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate. The commissioner is hereby empowered to make such provisions as deemed necessary to define the procedures for granting prior clearance for purchases of more than one thousand five hundred gallons of motor fuel or four thousand five hundred gallons of highway diesel motor fuel in a thirty-day period.

(g) Diesel motor fuel and motor fuel used in the operation of commercial fishing vessels. Diesel motor fuel or motor fuel purchased in this state by a commercial fisherman at retail wherein (1) such diesel motor fuel or such motor fuel is delivered by a pump equipped with a hose directly into the fuel tank of a commercial fishing vessel to be used as fuel in the operation of such vessel for the purpose of engaging in the commercial harvesting of fish for sale; and (2) such vessel is operated by a commercial fisherman; but only where (i) the tax imposed

pursuant to this article has been paid with respect to such diesel motor fuel or such motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(h) A subsequent purchaser which is registered as a distributor of diesel motor fuel shall be eligible for reimbursement of the tax imposed by section three hundred one-a of this article with respect to gallonage of residual petroleum product and non-highway diesel motor fuel subsequently sold by such purchaser to an organization which has qualified under paragraph four or five of subdivision (a) of section eleven hundred sixteen of this chapter for the exclusive use and consumption by such organization. Provided, however, this exemption shall in no event apply to a sale of non-highway diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and all deliveries hereunder shall be made to the premises occupied by the qualifying organization and used by such organization in furtherance of the exempt purposes of such organization. This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, further, that the commissioner shall require such other documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(i) Reimbursement for commercial gallonage. (1) A reimbursement shall be allowed to a consumer with respect to gallonage of non-highway diesel motor fuel or residual petroleum product (i) which was purchased by such consumer and where the supplemental tax imposed by section three hundred one-j of this article with respect to such gallonage was paid by a

petroleum business and passed through to such consumer, (ii) such consumer absorbed the entirety of such tax in the purchase price of such gallonage, and (iii) such gallonage was used and consumed by such consumer exclusively as "commercial gallonage". Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate, including a certification by the consumer that the product was used and consumed exclusively as "commercial gallonage" by such consumer.

(2) Calculation. The amount of the reimbursement shall be determined by multiplying the quantity of "commercial gallonage" eligible for reimbursement times the then current rate of the supplemental tax imposed by section three hundred one-j of this article with respect to non-highway diesel motor fuel or residual petroleum product, as the case may be. Any reimbursement of tax may be applied for not more often than monthly.

(j) Reimbursement for manufacturing gallonage. A subsequent purchaser shall be eligible for reimbursement of any taxes imposed under this article with respect to gallonage of residual petroleum product and non-highway diesel motor fuel subsequently sold by such purchaser to a consumer as "manufacturing gallonage." This reimbursement may be claimed only where (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of such tax. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate including a certificate by the consumer that such product is to be used and consumed exclusively as "manufacturing gallonage".

(k) Reimbursement for railroad gallonage. (1) A subsequent purchaser, which is registered as a distributor of diesel motor fuel, shall be eligible for a reimbursement in accordance with this subdivision with respect to non-highway diesel motor fuel subsequently sold by such purchaser to a consumer as "railroad diesel".

(2) The amount of the reimbursement with respect to such product shall

be equal to the difference between (i) the tax actually paid under this article by a petroleum business with respect to such product and subsequently passed through to and absorbed by such purchaser, and (ii) the tax under this article that would have been paid with respect to such product had an importing distributor sold such product directly to a purchaser as "railroad diesel". Provided that the commissioner shall require such documentary proof as the commissioner deems necessary to substantiate a reimbursement claim under this subdivision. Any reimbursement of tax may be applied for not more often than monthly.

(l) Reimbursement for mining and extraction. A purchaser shall be eligible for reimbursement of the tax imposed by section three hundred one-a of this article with respect to gallonage of residual petroleum product and non-highway diesel motor fuel, purchased for use and consumption directly and exclusively in the production of tangible personal property for sale by mining or extracting, but only if all of such fuel or product is delivered at the mining or extracting site and is consumed other than on the public highways of this state; provided, however, this reimbursement shall in no event apply to a sale of non-highway diesel motor fuel which involves a delivery at a filling station. This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(m) Reimbursement for passenger commuter ferries. A use by a passenger commuter ferry of non-highway diesel motor fuel or residual petroleum product where such non-highway diesel motor fuel or residual petroleum product was used and consumed by a passenger commuter ferry exclusively in providing mass transportation service. This reimbursement may be claimed only where (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such ferry possesses

documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of such tax. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

* (n) Reimbursement for E85. E85 purchased in this state and sold by such purchaser in this state where (1) such E85 is delivered to a filling station and placed in a storage tank of such filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle, (2) the tax imposed pursuant to this article has been paid with respect to such E85 and the entire amount of such tax has been absorbed by such purchaser, and (3) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

* NB Repealed September 1, 2031

* (o) (1) Partial reimbursement for B20. B20 purchased in this state and sold by such purchaser in this state where (i) the tax imposed pursuant to this article has been paid with respect to such B20 and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

(2) Calculation of partial reimbursement. The amount of the reimbursement under this subdivision shall be determined by multiplying the quantity of B20 times twenty percent of the applicable taxes otherwise imposed by this article on such fuel.

* NB Repealed September 1, 2031

(p) Reimbursement for motor fuel and diesel motor fuel used by a voluntary ambulance service, as defined in section three thousand one of the public health law, a fire company or a fire department, as defined in section three of the volunteer firefighters' benefit law, or a volunteer rescue squad supported in whole or in part by tax monies, where any such entity is the purchaser, user or consumer of motor fuel

or diesel motor fuel in a vehicle owned and operated by such entity and used exclusively for such entity's purposes. A purchaser shall be eligible for reimbursement of the tax imposed pursuant to this article if (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by such purchaser of the entire amount of such tax. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

(q) Reimbursement for tugboats and towboats. A use by a tugboat or towboat of motor fuel, diesel motor fuel, or residual petroleum product. This reimbursement may be claimed only where (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such tugboat or towboat possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of such tax. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

§ 301-d. Utility credit or reimbursement. (a) Gallonage eligible for credit or reimbursement. An electric corporation, as defined in subdivision thirteen of section two of the public service law, subject to the supervision of the department of public service, shall be entitled to a credit against the tax imposed by section three hundred one-a of this article or a reimbursement of such tax with respect to the following gallonage:

(1) Credit. Residual petroleum product and non-highway diesel motor fuel (i) imported into this state by such electric corporation which is a petroleum business where the tax liability under section three hundred one-a of this article is imposed on such electric corporation and where the residual petroleum or non-highway diesel product so imported is used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity or (ii) purchased in this state by such electric corporation by the use of a valid direct payment permit

whereby such electric corporation assumed full liability for tax with respect to such product where such product so purchased is used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity.

(2) Reimbursement. Residual petroleum product and non-highway diesel motor fuel purchased in this state by such electric corporation where the tax imposed by section three hundred one-a of this article with respect to such residual petroleum or diesel product was paid and the utility absorbed such tax in the purchase price of such fuel and where such product is used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity.

(b) Calculation. The amount of the credit or reimbursement shall be determined by multiplying the gallonage of the residual petroleum product eligible for the credit or reimbursement times the basic credit or reimbursement per gallon of two and ninety-eight hundredths cents and by multiplying the gallonage of all diesel product eligible for credit or reimbursement times the basic credit or reimbursement per gallon of three cents. The basic credit or reimbursement per gallon for residual petroleum product and diesel product shall be adjusted at the same time and in the same manner as set forth in subdivisions (f) and (g) of section three hundred one-a of this article for the motor fuel and diesel motor fuel rate and the residual petroleum product rate. All the provisions of subdivision (h) of such section shall apply to such adjusted credit or reimbursement and such adjusted credit or reimbursement shall be published at the same time and in the same manner as such rates are published. The credit or reimbursement determined pursuant to this section shall be rounded to the nearest one-hundredth of a cent. Provided, however, that on April first, nineteen hundred ninety-nine, there shall be added to the basic credit or reimbursement amount, with respect to both residual petroleum product and diesel product, as then adjusted and in effect, the amount of one-half cent. On the immediately following first day of January and each January thereafter, there shall be added to the basic credit or reimbursement amount, with respect to both residual petroleum product and diesel product, as then adjusted and in effect on such date (determined with respect to the basic credit or reimbursement amount only, without reference to such one-half cent), the amount of one-half cent.

(c) Application of the credit or reimbursement. The credit shall be applied against liability for tax under this article for the same period during which the credit arose. Any excess may then be applied to tax liability under this article for subsequent periods.

(d) Any reimbursement of tax may be applied for not more often than monthly. An electric corporation entitled to reimbursement under this section, in lieu of such reimbursement, may take credit therefor on a return filed under this article.

§ 301-e. Aviation fuel business. (a) Notwithstanding any other provision of this chapter, for taxable months commencing on and after the first day of September, nineteen hundred ninety, there is hereby imposed upon every aviation fuel business for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state, for all or any part of each of its taxable months a monthly tax equal to the sum of (1) the aviation gasoline component determined pursuant to subdivision (b) of this section and (2) the kero-jet component determined pursuant to subdivision (c) of this section. Provided, however, the commissioner may permit the tax imposed under this subdivision and returns related to such tax to be paid and filed for a period covering twelve consecutive taxable months by aviation fuel businesses which are not airlines.

(b) Aviation gasoline component. (1) The aviation gasoline component shall be determined by multiplying the aviation gasoline rate times the number of gallons of aviation gasoline imported or caused to be imported into this state by an aviation fuel business for use, distribution, storage or sale in the state or produced, refined, manufactured or compounded in the state by an aviation fuel business. Provided that importation of aviation gasoline into the state in the fuel tanks of aircraft shall be importation for use for the purposes of this section. The basic aviation gasoline rate shall be five and one-half cents per gallon. The rate shall be adjusted at the same time as the rates of the components of the petroleum business tax imposed by section three hundred one-a of this article, and the method of making adjustments to the aviation gasoline rate shall be the same as the method used for such rates.

(2) Partial credit or refund with respect to aviation gasoline. A distributor of motor fuel shall be entitled to a partial credit or refund of the tax paid under this section on aviation gasoline sold to a fixed base operator registered under article twelve-a of this chapter as a "retail seller of aviation gasoline" under the circumstances described in subparagraph (i) of paragraph (b) of subdivision one-a of section two hundred eighty-nine-c of this chapter. Provided, that in order to qualify for the credit or refund the amount of tax claimed as a credit or refund shall have been paid or assumed on such sale by such distributor and shall have not been passed on to such "retail seller of aviation gasoline". A distributor of motor fuel, also registered as a "retail seller of aviation gasoline", shall be entitled to a partial credit or refund for aviation gasoline delivered and stored at its fixed base operations premises in such subparagraph (i), and such credit or refund shall accrue at the time the fuel is so delivered and placed in such storage facility. An airline which is registered as a distributor of motor fuel and which imports aviation gasoline into this state for use in its airplanes, where delivery and storage take place as described in such subparagraph (i), shall also be allowed such partial credit or refund of tax on such fuel so imported and used exclusively in the operation of its airplanes. An aviation fuel business, taxed as such, by reason of importation in the fuel tank of an airplane shall also be allowed such partial credit or refund for aviation gasoline consumed in this state. The amount of the partial credit or refund allowable under this subparagraph shall be the excess of tax which exceeds five and two-tenths cents per gallon. Provided, that such five and two-tenths cents rate used to compute this partial credit and refund shall be adjusted at the same time as the rate of the aviation gasoline component imposed by paragraph one of this subdivision, and the methods of making such adjustments to this partial credit and refund shall be the same as the method used for such rates.

(c) Kero-jet fuel component. The kero-jet fuel component shall be determined by multiplying the kero-jet fuel rate times the number of gallons of (1) kero-jet fuel imported or caused to be imported into this state by an aviation fuel business and consumed in this state by such business in the operation of its aircraft; and (2) kero-jet fuel, which has not been previously included in the measure of the tax imposed by

this section, (i) which is sold in this state by an aviation fuel business to persons other than those registered under this article as aviation fuel businesses or (ii) which is consumed in this state by an aviation fuel business in the operation of its aircraft. Provided that importation of kero-jet fuel in the fuel tanks of aircraft shall be importation for the purposes of this section. The basic kero-jet fuel rate shall be six and eight-tenths cents per gallon. The rate shall be adjusted at the same time as the rates of the components of the petroleum business tax imposed by section three hundred one-a of this article, and the method of making adjustments to the kero-jet fuel rate shall be the same as the method used for such rates.

(d) (1) An aviation fuel business shall be entitled to reimbursement of the tax imposed by this section, less any credit allowed or refund granted, with respect to aviation gasoline purchased in this state and consumed by such business exclusively as aviation fuel in the operation of its aircraft where such aviation gasoline is not consumed in this state, provided that the amount of such tax, less any credit or refund, has been absorbed by such aviation fuel business. Provided, further, an aviation fuel business which has imported aviation gasoline into this state and consumed such aviation gasoline in the operation of its aircraft where a portion of such aviation gasoline is not consumed in this state shall be allowed a credit for such gallonage not consumed in this state in computing the tax imposed by such section.

(2) An aviation fuel business shall be entitled to reimbursement of the tax imposed by this section with respect to kero-jet fuel purchased in this state and consumed by such business exclusively as aviation fuel in the operation of its aircraft where such kero-jet fuel is not consumed in this state, provided that the entire amount of such tax has been absorbed by such aviation fuel business.

(3) Any purchaser of aviation gasoline in this state who consumes such aviation gasoline exclusively as aviation fuel in the operation of its aircraft shall be entitled to a partial reimbursement of the tax imposed by this section with respect to aviation gasoline which was purchased by such purchaser and upon which such purchaser paid or absorbed the full amount of the tax imposed by this section (where no partial credit or refund under paragraph two of subdivision (b) of this section was provided with respect to such aviation gasoline) where: (i) such

purchaser purchases the aviation gasoline from a fixed base operator which qualifies as a retail seller of aviation gasoline but is not so registered under article twelve-A of this chapter, or (ii) such purchaser purchases the aviation gasoline in bulk from a distributor of motor fuel registered under article twelve-A of this chapter where such distributor delivers such aviation gasoline directly into a bulk storage facility of the purchaser which is at a fixed and permanent place at an airport within this state and is used solely to fill the fuel tanks of its aircraft for use in the operations thereof. The amount of the reimbursement allowable under this paragraph shall be equal to the amount of the partial credit or refund allowable under paragraph two of subdivision (b) of this section.

(4) The commissioner shall require such documentary proof to qualify for any credit, refund or reimbursement of tax provided under this subdivision as the commissioner deems appropriate.

(e) All the provisions of this article relating to the administration, collection and disposition of the tax imposed on petroleum businesses, including the registration provisions of section three hundred two of this article applicable to residual petroleum product businesses, shall apply to the tax imposed by this section and the registration under this article of aviation fuel businesses with such modification as may be necessary in order to adapt the language of such provisions to the tax imposed by this section. When reference in this article is made to "the tax imposed under this article" or where words of similar import are used, unless the context indicates otherwise, such reference shall be to the tax imposed under section three hundred one-a of this article and this section. The tax imposed by this section shall be administered jointly in conjunction with, and as a part of, the tax imposed on petroleum businesses as if the provisions of subdivision (a) of this section, imposing the tax under this section, were made a part of the imposition provisions of section three hundred one-a, except where contrary or not applicable to or inconsistent with the provisions of this section. Provided, further, for the purpose of this section:

(1) the term "aviation fuel business" shall mean a "petroleum business" as described in paragraph one or paragraph two of subdivision (b) of section three hundred of this article except that the activities described therein shall separately relate to aviation gasoline (such

paragraph one) and kero-jet fuel (such paragraph two) and such term shall also include every corporation or unincorporated business importing or causing to be imported aviation fuel into this state for consumption by it in this state by bringing such aviation fuel into this state in aircraft fuel tanks which connect to the engines propelling such aircraft.

(2) kero-jet fuel and aviation gasoline consumed in this state shall be presumed to mean all such fuel consumed during takeoffs from points in this state;

(3) where the commissioner of taxation and finance decides that with respect to a certain petroleum business any of the methods prescribed in paragraph two of this subdivision do not fairly and equitably reflect fuel consumed in this state, the commissioner shall prescribe methods of attribution which fairly and equitably reflect fuel consumed in this state.

(4) "aviation fuel" means kero-jet fuel and aviation gasoline (as described in paragraph three of subdivision (a) of section three hundred one-b of this article). Provided, further the term kero-jet shall not include naphtha based aviation fuel refined and used solely for propelling military jet airplanes of the United States Armed Forces.

(f) An aviation fuel business, which services four or more cities in the state with non-stop flights between such cities, shall be exempt from the tax imposed by this section and any surcharge imposed on such tax.

§ 301-h. Tax relating to carriers. (a)(1) Notwithstanding any other provision of this chapter, there is hereby imposed a monthly tax measured by the rate of the tax hereunder times the number of gallons of motor fuel and diesel motor fuel imported into this state in the fuel tanks of qualified motor vehicles which (i) previously thereto, have not been included in the measure of the tax imposed by section three hundred one-a of this article and (ii) are consumed in this state in the operation of such qualified motor vehicles. Such number of gallons so imported shall be the positive difference between the gallonage consumed by the carrier in this state in its operations during the reporting period and the gallonage purchased by the carrier in this state during

the reporting period, which gallonage has been included in the measure of the tax imposed by such section three hundred one-a of this article. Each carrier shall be entitled to a credit, equal to the tax under this article absorbed by such carrier with respect to any excess of gallonage purchased in the state during the reporting period over gallonage so consumed in this state during such period, against the tax for which such carrier would otherwise be liable for the eight succeeding calendar quarters following the end of the reporting period for which such excess was derived, or, if a claim for refund is filed on or before the last day of the month immediately following the four-year period commencing with the end of the reporting period for which such excess was derived, the amount of such credit shall be refunded.

(2) The rate of the tax imposed by this section shall be equal to the motor fuel and highway diesel motor fuel rate set by subdivision (e) of section three hundred one-a plus the rate of the supplemental tax imposed by section three hundred one-j of this article as such rates are specified therein and as they may be adjusted as provided in such provisions.

(3) The tax and tax surcharge shall be upon the carrier, as defined for purposes of the tax imposed by article twenty-one-A of this chapter, except that where the carrier is not the owner of such qualified motor vehicle, the tax shall be a joint and several liability upon both the carrier and the owner. The term "qualified motor vehicle" shall mean such term as defined for the purposes of the tax imposed by such article twenty-one-A. The exemptions provided by section five hundred twenty-five of such article twenty-one-A shall apply to the tax imposed by this section.

(b) Procedures. Any provision of section three hundred fifteen or any other provision of this article to the contrary notwithstanding, the provisions of sections five hundred twenty-six through five hundred twenty-eight of this chapter, including those provisions of article twenty-one-A of this chapter relating to penalty and interest, shall apply to the administration of and procedures with respect to the tax imposed by this section in the same manner and with the same force and effect as if the language of such sections had been incorporated in full into this section and had expressly referred to the tax under this section, except to the extent that any such provision is either

inconsistent with a provision of this section or is not relevant to this section.

(c) Joint administration. The commissioner shall jointly administer the taxes imposed by article twenty-one-A of this chapter and the tax imposed by this section, including the joint reporting and payment, assessment, collection, determination and refund or credit of such taxes. For purposes of the joint administration of taxes, the commissioner's functions under such article twenty-one-A and any returns, forms, statements, documents or information to be submitted to the commissioner under such article, any books and records to be kept for purposes of the taxes imposed by such article, any schedules of amounts to be collected under such article, and the payment of taxes under such article, shall apply to the tax imposed by this section and shall be on a joint basis with respect to such tax imposed by this section and the taxes imposed by such article.

(d) Disposition. Any provision of this article to the contrary notwithstanding, the full amount of tax, as well as interest and penalties relating thereto, collected or received by the commissioner under this section shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. Beginning on April first, two thousand one, all the moneys received by the commissioner pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this article.

§ 301-j. Supplemental petroleum business tax and supplemental tax on aviation gasoline component of aviation fuel business tax. (a)

Imposition of tax. (1) In addition to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, there is hereby imposed upon every petroleum business subject to tax imposed under section three hundred one-a of this article and every aviation fuel business subject to the aviation gasoline component of the tax imposed under section three hundred one-e of this article, a supplemental monthly tax for each or any part of a taxable month at a rate of six and eight-tenths cents per gallon with respect to the products included in each component of the taxes imposed by such section

three hundred one-a and the aviation gasoline component of the tax imposed by such section three hundred one-e of this article.

(2) Provided, however, "commercial gallonage," as such term is defined in subdivision (k) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

(3) Provided, further, "railroad diesel," as such term is defined in subdivision (l) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

(4) Provided, further, a separate per gallon rate shall apply with respect to highway diesel motor fuel. Such rate shall be determined by taking the adjusted rate per gallon of tax imposed under paragraph one of this subdivision as adjusted in accordance with paragraph five of this subdivision and subtracting therefrom one and three-quarters cents. Commencing January first, two thousand twelve, and each January thereafter, the per gallon rate applicable to highway diesel motor fuel shall be the adjusted rate under paragraph one of this subdivision as adjusted in accordance with paragraph five of this subdivision which commences on such date minus one and three-quarters cents. The resulting rate under this paragraph shall be expressed in hundredths of a cent.

(5) Except as herein provided, the tax imposed under this section shall be calculated in the same respective manner as the taxes imposed by section three hundred one-a and section three hundred one-e of this article. Except for section three hundred one-d and except as otherwise provided in this section, all the provisions of this article applicable to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were respectively imposed by such sections.

(b) Credit, refund or reimbursement with respect to aviation gasoline.

(i) A credit or refund of the tax paid under this section relative to the tax imposed on aviation gasoline under section three hundred one-e of this article shall be available with respect to aviation gasoline which qualifies for the partial credit or refund under paragraph two of subdivision (b) of section three hundred one-e of this article.

(ii) A reimbursement of the tax paid under this section relative to the tax imposed on aviation gasoline under section three hundred one-e of this article shall be available with respect to aviation gasoline

which qualifies for the partial reimbursement under paragraph three of subdivision (d) of section three hundred one-e of this article and for which no credit or refund under subparagraph (i) of this paragraph was provided.

(iii) The commissioner shall require such documentary proof to qualify for any credit, refund or reimbursement of tax provided by this paragraph as the commissioner deems appropriate.

(c) Rate adjustment. The rate of the supplemental tax shall be adjusted at the same time as the rates of the components of the taxes imposed by sections three hundred one-a and three hundred one-e of this article, and the method of making adjustments to the rate of the supplemental tax shall be the same as the method used for such rates.

(d) Deposit and disposition of revenue. All taxes, and any interest and penalties relating thereto, collected or received with respect to the supplemental petroleum and aviation fuel business tax imposed by this section up to and including March thirty-first, nineteen hundred ninety-three shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. Except as otherwise provided, on and after April first, nineteen hundred ninety-three, all taxes, and any interest and penalties relating thereto, collected or received in any month with respect to such supplemental petroleum and aviation fuel business tax imposed by this section, together with any other moneys specified in this chapter to be deposited under this subdivision, shall be deposited, on or before the fifteenth day of each succeeding month, proportionately into the following dedicated fund accounts without priority; sixty-three percent in the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law, thirty-four percent in the dedicated mass transportation trust fund established pursuant to section eighty-nine-c of the state finance law to be distributed as follows: eighty-five percent of such amount shall be allocated to the New York city transit authority and its subsidiaries and the Staten Island rapid transit operating authority and fifteen percent of such amount shall be allocated to the Long Island Rail Road Company and metro north commuter railroad company in accordance with the procedures for payment and distribution specified in section one thousand two hundred seventy-c of the public authorities law, for payment, subject to

appropriation, to the metropolitan transportation authority dedicated tax fund established pursuant to section twelve hundred seventy-c of the public authorities law, and three percent in such dedicated mass transportation trust fund to be distributed, subject to appropriation, for purposes authorized by section eighty-nine-c of the state finance law, to entities other than the mass transit operating agencies which receive money from the metropolitan transportation authority dedicated tax fund. Notwithstanding any general or special law to the contrary, other than a law which makes specific reference to this sentence of this section, so long as such metropolitan transportation authority dedicated tax fund shall exist, any appropriation from the dedicated mass transportation trust fund to the metropolitan transportation authority, its affiliates or its subsidiaries shall be deemed to be an appropriation to the metropolitan transportation authority and the total amount paid pursuant to such appropriation or appropriations or section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three including the second clause of the first sentence of subdivisions a and b thereof, shall be deposited to such metropolitan transportation authority dedicated tax fund and distributed in accordance with the provisions of section twelve hundred seventy-c of the public authorities law.

Prior to making deposits as provided in this subdivision, the comptroller shall retain such amount as the commissioner may determine to be necessary, subject to the approval of the director of the budget, for reasonable costs of the department in administering and collecting the taxes deposited pursuant to this subdivision and for refunds and reimbursements with respect to such taxes, out of which the comptroller shall pay any refunds or reimbursements of such taxes to which taxpayers shall be entitled. Provided, further, however, that, prior to such deposit, from the amounts so collected or received during the period commencing on January first, nineteen hundred ninety-four and ending on March thirty-first, nineteen hundred ninety-four, an amount equal to the portion of the taxes, interest and penalties so received or collected resulting from the amendments made by sections forty-two, forty-three and forty-four of chapter fifty-seven of the laws of nineteen hundred ninety-three shall be deposited and disposed of pursuant to the

provisions of subdivision one of section one hundred seventy-one-a of this chapter.

§ 301-1. Refund for tax with respect to in-bulk consumer bad debt.

There shall be allowed to a registered petroleum business or aviation fuel business a refund under this section for the taxes imposed by sections three hundred one-a, three hundred one-e, and three hundred one-j of this article for the tax paid under such sections with respect to gallonage which is represented by a worthless debt as follows:

(a) The refund shall be allowed to a registered petroleum business or aviation fuel business for gallonage with respect to which tax liability for the taxes under this article is imposed on such petroleum business or aviation fuel business where (i) such gallonage has been included in the reports filed by such petroleum business or aviation fuel business and all the taxes under this article with respect to such gallonage have been paid by such business, (ii) such gallonage was sold in-bulk by such petroleum or aviation fuel business to a purchaser for such purchaser's own use and consumption and (iii) such sale gave rise to a debt which became worthless, as that term is used for federal income tax purposes, and where such debt is deducted as a worthless debt for federal income tax purposes for the taxable year covering the month in which such refund claim relating to such debt is filed. Provided, however, for the purposes of this section, a sale of motor fuel and highway diesel motor fuel to a filling station shall be deemed to be a sale in-bulk for such filling station's own use and consumption and, provided, further, in no event shall a worthless debt qualify with respect to the refund hereunder where such debt arises from a retail sale at a filling station or sale wherein product is delivered directly into the fuel tank of a motor vehicle, airplane or other conveyance.

(b) Partial payment. Where a debt became worthless only in part due to partial payment, the amount of the refund under this section shall be determined by apportioning the amount of any partial payment among the components of the total purchase price, including tax under this article, and the amount of tax remaining unpaid after application of the partial payment shall be the amount of the refund.

(c) Upon receipt of a claim for refund in processible form, interest

shall be allowed and paid at the overpayment rate set by the commissioner pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter from the date of the receipt of the refund claim to the date immediately preceding the date of the refund check except no such interest shall be allowed or paid if the refund check is mailed within ninety days of such receipt and except no interest shall be allowed or paid if the amount thereof would be less than one dollar. Provided, further, the refund shall be granted pro rata against sections three hundred one-a, three hundred one-e, and three hundred one-j of this article, as the case may be, to the same extent as represented by the remittance of the petroleum business or aviation fuel business with respect to the gallonage represented by the worthless debt.

(d) In addition to the applicable report and evidence of tax payment, the commissioner may require such other evidentiary proof as the commissioner deems appropriate to demonstrate qualification for the refund under this section. Provided, further, that the refund of tax allowed under this section, for purposes of the income and franchise taxes imposed by this chapter, shall be reported in such detail as the commissioner may direct. Moreover, notwithstanding any provision to the contrary, all state agencies shall cooperate with the commissioner in administering the refund authorized by this section and shall share with such commissioner such information as the commissioner may deem appropriate in administering the refund under this section.

(e) If there is a disallowance of a bad debt with respect to which a refund under this section has been paid, such disallowance shall have the effect of and be treated as a report of federal change, correction or disallowance (as such effect and treatment is described in section six hundred fifty-nine and subdivision three of section two hundred eleven of this chapter) and the time to assess under this article with respect to such disallowance shall be determined as set forth in such sections.

§ 301-m. Credit or reimbursement for certain governmental purchases by credit card. Notwithstanding any provision of the law to the contrary, tax paid pursuant to this article in respect to motor fuel or diesel motor fuel purchased by a government entity and paid for by such

government entity with a credit card shall be reimbursed or credited to the issuer of the credit card used for such purchase or the fuel distributor designated in accordance with and subject to the provisions of sections eleven hundred thirty-eight, eleven hundred thirty-nine, eleven hundred forty-two, and eleven hundred forty-five of this chapter concerning such credit card issuers, fuel distributors and government entities. Such provisions shall apply with respect to the administration of and procedure with respect to the taxes imposed under this article in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this article and had expressly referred to the tax under this article, with such modifications as may be necessary in order to adapt the language of such provisions to the taxes imposed by this article, except to the extent that any such provision is not relevant to this article.

§ 302. Registration of petroleum businesses. (a) Registration required. Each petroleum business with respect to motor fuel must be registered with the department of taxation and finance as a distributor of motor fuel under article twelve-A of this chapter. Each petroleum business with respect to diesel motor fuel must be registered with the department of taxation and finance as a distributor of diesel motor fuel under article twelve-A of this chapter or, where applicable, as a "distributor of kero-jet fuel only" under such article. Each petroleum business with respect to residual petroleum product must be registered as a residual petroleum product business under subdivision (b) of this section. No petroleum business unless so registered, shall make any sale, transfer, use or other disposition of motor fuel, diesel motor fuel or residual petroleum product within the state, except a sale, transfer, use or other disposition, if any, as to which the state cannot impose such condition by reason of the United States constitution and of laws of the United States enacted pursuant thereto. No person, unless registered as a residual petroleum product business under this section, shall (i) import or cause residual petroleum product to be imported into this state, (ii) produce, refine, manufacture or compound residual petroleum product within the state, or (iii) make a sale or use of residual petroleum product in the state other than a self-use of

residual petroleum product which has been the subject of a retail sale to such person.

(b) Residual petroleum product business. The department, upon the application of a corporation or unincorporated business, shall register such corporation or unincorporated business as a residual petroleum product business except that the commissioner may refuse to register an applicant for any of the grounds specified in subdivision two or five of section two hundred eighty-three of this chapter or in subdivision (d) of this section. The application shall be in such form and contain such information as the commissioner shall prescribe. All of the provisions of subdivisions two, four, five, six, seven, eight, nine and ten of section two hundred eighty-three of this chapter relating to registration of distributors shall be applicable to the registration of residual petroleum product businesses under this section with the same force and effect as if the language of those subdivisions had been incorporated in full in this section and had expressly referred to the registration of residual petroleum product businesses and the tax imposed by this article, with such modification as may be necessary in order to adapt the language of such provisions to the provisions of this article, provided, specifically, that the term "distributor" shall be read as "residual petroleum product business" and the term "motor fuel" shall be read as "residual petroleum product". Provided, however, that if the commissioner is satisfied that the requirements of such provisions for registration are not necessary in order to protect tax revenues, the commissioner may limit or modify such requirements with respect to corporations or unincorporated businesses not required to be registered as distributors of motor fuel or diesel motor fuel.

(c) Bond or other security. The commissioner may require a petroleum business to file with it a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to the commissioner, in such amount as the commissioner may fix in an amount determined in accordance with rules and regulations prescribed by the commissioner, to secure the payment of any sums due from such petroleum business pursuant to this article. The commissioner may require that such a bond or other security be filed before a petroleum business is registered, and the amount thereof may be

increased at any time when in the commissioner's judgment the same is necessary as a protection to the revenues under this article. If securities are deposited as security under this subdivision, such securities shall be kept in the joint custody of the comptroller and the commissioner of taxation and finance. Such securities may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such petroleum business pursuant to this article, but no such sale shall be had until after such petroleum business shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale the surplus, if any, above the sums due under this article shall be returned to such petroleum business. All of the provisions of paragraph (b) of subdivision six of section two hundred eighty-three of this chapter relating to increasing the amount of the bond or other security required to be filed pursuant to article twelve-A of this chapter shall be applicable to bonds or other security required to be filed pursuant to this subdivision.

(d) Refusal to register. For the purposes of determining whether to refuse an application for registration under article twelve-A of this chapter as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or under this section as a residual petroleum product business, the references in subdivision two of section two hundred eighty-three of this chapter to employees or shareholders under a duty to file a return under or pursuant to the authority of article twelve-A of this chapter or pay the taxes imposed by or pursuant to the authority of such article on behalf of the applicant or another person shall be deemed to also include an employee under a duty to file a return or pay taxes under or pursuant to the authority of this article on behalf of such applicant or other person. In addition to the grounds specified in section two hundred eighty-three of this chapter, the commissioner may refuse to register an applicant as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business where the commissioner ascertains that the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant under a duty to file a return

under or pursuant to the authority of this article or article twelve-A of this chapter or to pay the taxes imposed by or pursuant to the authority of this article or article twelve-A of this chapter on behalf of the applicant, (1) has committed any of the acts or omissions which are, or was convicted as, specified in subdivision (e) of this section within the preceding five years, or (2) was an officer, director or partner of another person, or who directly or indirectly owned more than ten percent of the shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or who was an employee or shareholder of another person under a duty to file a return under or pursuant to the authority of this article or article twelve-A of this chapter or pay the taxes imposed by or pursuant to the authority of this article or article twelve-A of this chapter on behalf of such other person at the time such other person committed any of the acts or omissions which are, or was convicted as, specified in subdivision (e) of this section within the preceding five years.

(e) Cancellation or suspension of registration. The grounds for a cancellation or suspension of a registration under article twelve-A of this chapter as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or under this section as a residual petroleum product business are those grounds specified in section two hundred eighty-three of this chapter and, in addition to such grounds, the following grounds relating to this article shall apply:

(1) A registration as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business may be cancelled or suspended if the commissioner determines that a registrant or an officer, director or partner of the registrant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such registrant under a duty to file a return under or pursuant to the authority of this article or article twelve-A of this chapter or to pay the taxes imposed by or pursuant to the authority of this article or article twelve-A of this chapter on behalf of the registrant (A) fails to file or maintain in full force and effect a bond or other security when required pursuant

to subdivision (c) of this section or when the amount thereof is increased,

(B) fails to comply with any of the provisions of this article or any rule or regulation adopted pursuant to this article by the commissioner,

(C) knowingly aids and abets another person in violating any of the provisions of this article or any rule or regulation adopted pursuant to this article by the commissioner,

(D) transfers its registration as a petroleum business without the prior written approval of the commissioner,

(E) with respect to a petroleum business which is a corporation, has been dissolved pursuant to section two hundred three-a of this chapter and subdivision (d) of section three hundred ten of this article,

(F) commits fraud or deceit in his or its operations as a petroleum business or has committed fraud or deceit in procuring his or its registration,

(G) has impersonated any person represented to be a petroleum business under this article but not in fact registered as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or a residual petroleum product business, or

(H) has knowingly aided and abetted the distribution of motor fuel, diesel motor fuel or residual petroleum product by corporation or unincorporated business which such registrant or such other person knows (i) has not been registered by the commissioner as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business and (ii) is a petroleum business pursuant to the terms of subdivision (b) of section three hundred of this article.

(2) A registration as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business may be cancelled or suspended if the commissioner determines that a registrant or an officer, director or partner of the registrant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such registrant under a duty to file a return under or pursuant to the authority of this article or article twelve-A of this chapter on behalf of the registrant, was an officer, director or partner of another person or was a

shareholder directly or indirectly owning more than ten percent of the number of shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or was an employee or shareholder of another person under a duty to file a return under or pursuant to the authority of this article or article twelve-A of this chapter or to pay the taxes imposed by or pursuant to the authority of this article or article twelve-A of this chapter on behalf of such other person at the time such other person committed any of the acts specified in paragraph one of this subdivision within the preceding five years.

(f) Cancellation or suspension of registration prior to a hearing. The grounds for cancelling or suspending a registration under article twelve-A of this chapter as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or under this section as a residual petroleum product business prior to a hearing are those specified in subdivision five of section two hundred eighty-three of this chapter and, in addition to such grounds, the following grounds relating to this article shall apply:

(1) the failure to file a return within ten days of the date prescribed for filing a return under this article or nonpayment of any tax due pursuant to this article if the registrant shall have failed to file such return or pay such taxes within ten days after the date the demand therefor is sent by registered or certified mail to the address of the distributor or residual petroleum business given in its application, or an address substituted therefor as provided in subdivision five of section two hundred eighty-three of this chapter,

(2) the failure to continue to maintain in full force and effect at all times the bond or other security required to be filed pursuant to subdivision (c) of this section, provided, however, that if a surety bond is cancelled prior to expiration, the commissioner may after considering all the relevant circumstances make such other arrangements, and may require the filing of such other bond or other security as it deems appropriate,

(3) the transfer of a registration as a residual petroleum business without the prior written approval of the commissioner, or

(4) with respect to a petroleum business which is a corporation, the dissolution or annulment of such corporation pursuant to section three

hundred ten of this article.

§ 305. Exempt entities.--No corporation or unincorporated business shall be a petroleum business subject to tax under this article because it imported or caused motor fuel, diesel motor fuel or residual petroleum product to be imported into this state or produced, refined, manufactured or compounded such products in this state where such motor fuel, diesel motor fuel or residual petroleum product is exclusively for the use and consumption of such corporation or unincorporated business and such corporation or incorporated business is an organization described in subdivision (a) of section eleven hundred sixteen of this chapter.

§ 308. Returns and payment of tax.-- (a) General.--Every petroleum business subject to tax under this article shall monthly, on or before the twentieth day following the close of its taxable month, file a return which shall state (i) the number of gallons of motor fuel imported or caused to be imported into this state for use, distribution, storage or sale in the state or produced, refined, manufactured or compounded in the state during the preceding calendar month, (ii) the number of gallons of diesel motor fuel sold or used or, with respect to gallonage which prior thereto has not been included in the measure of the tax imposed by this article, delivered by the petroleum business to a filling station or into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof during the preceding calendar month, (iii) the number of gallons of, and the resultant product produced, manufactured or blended, using diesel motor fuel as a component of such resultant product and the sales of such resultant product, and (iv) the number of gallons of residual petroleum product sold or used in this state and the sales of such residual petroleum product, for the period covered by such return. A residual petroleum business shall include in its reports the number of gallons of residual petroleum product imported into the state or purchased in this state, the number of gallons of diesel motor fuel purchased in this state and the number of gallons of, and the resultant product produced,

manufactured or blended by such petroleum business, using diesel motor fuel as a component of such resultant product. The commissioner of taxation and finance may permit the filing of a return on a quarterly basis in the case of a petroleum business which only makes sales of diesel motor fuel solely for residential heating purposes and which is registered under article twelve-A of this chapter as a diesel motor fuel distributor under a limited registration applicable only to the importation, sale and distribution of diesel motor fuel for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter or in the case of a petroleum business registered as a "distributor of kero-jet fuel only" pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter. In the case of such returns permitted to be filed on a quarterly basis, the adjustments to the rates of tax then in effect, as provided for in sections three hundred one-a and three hundred one-e of this article, which take effect on the first day of January of each year shall, with respect to such quarterly return, take effect on the first day of the next succeeding March. Returns shall be filed with the commissioner on a form prescribed by the commissioner, setting forth such other information as the commissioner may prescribe. Every petroleum business shall also transmit such other returns and such facts and information as the commissioner may require in the administration of this article. Every petroleum business which is a corporation subject to tax under this article and which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the commissioner a return on the date of such cessation, or at such other time as the commissioner may require, covering each month or period for which no return was theretofore filed. The commissioner may, if the commissioner deems it necessary in order to insure the payment of the tax imposed by this article, require returns to be made at such times and covering such periods as the commissioner may deem necessary. Notwithstanding the foregoing provisions of this subdivision, the commissioner may require any corporation or unincorporated business that engages in transactions involving petroleum or similar products, including aviation fuels, to file a monthly return, which shall contain such information as the commissioner prescribes, regardless of whether such corporation or unincorporated business is

subject to tax under this article. Notwithstanding the provisions of this subdivision, every petroleum business that operates a "commercial vessel", as defined in subdivision (b) of section eleven hundred one of this chapter, shall annually file the returns required under this section, on a form and containing such information as the commissioner prescribes. Such "commercial vessel" returns shall be filed annually on or before March twentieth and shall cover the four sales tax quarterly periods described in subdivision (b) of section eleven hundred thirty-six of this chapter immediately preceding such date.

(b) Payment of tax. Each petroleum business shall pay to the commissioner of taxation and finance with the filing of the return or returns the tax imposed by this article during the period covered by the return. Such tax imposed on any petroleum business which is a corporation and which ceases to exercise its franchise or to be subject to the tax imposed by this article shall be payable to the commissioner at the time the return is required to be filed, provided such tax of a petroleum business which is a domestic corporation and which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other taxes of any such petroleum business, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time.

(c) Special provisions regarding sole proprietorships.--With respect to any petroleum business which is a sole proprietorship:

(1) the return for such petroleum business where the proprietor has died shall be made and filed by his executor, administrator, or other person charged with his property, and

(2) the return for such petroleum business where the proprietor is unable to make a return by reason of a disability shall be made and filed by his conservator, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(d) Estates and trusts.--The return for a petroleum business which is an estate or trust shall be made and filed by the fiduciary.

(e) Joint fiduciaries.--If two or more fiduciaries are acting jointly on behalf of a petroleum business, the return may be made by any one of

them.

(f) Notice of qualification as receiver, etc.--Every receiver, trustee in bankruptcy, assignee for benefit of creditors of, or other fiduciary for a petroleum business shall give notice of his qualification as such to the commissioner of taxation and finance, as may be required by regulation.

(g) Certification.--Every return shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the petroleum business duly authorized so to act where such petroleum business is a corporation, or of the individual or one of the individuals, or members of the partnership making the same where the petroleum business is an unincorporated business, to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the petroleum business. Blank forms of returns shall be furnished by the commissioner of taxation and finance, on application, but failure to secure such a blank shall not release any petroleum business from the obligation of making any return required by this article.

(h) Action by attorney general.--An action may be brought at any time by the attorney general at the instance of the commissioner of taxation and finance, in the name of the state, to compel the filing of returns due under this article.

(i) Returns and records.--Returns shall be preserved for five years, and thereafter until the commissioner of taxation and finance orders them to be destroyed. Every petroleum business subject to tax under this article shall keep the records and documents referred to in subdivision one of section two hundred eighty-six of this chapter and such other records of its business in such form as the commissioner may require; moreover, the records required of transporters and storers under such subdivision shall apply with the same force and effect to transporters and storers of any product included in the measure of the tax imposed by this article. All such records shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

(j) Every petroleum business subject to tax under this article that is also a distributor, as defined in section two hundred eighty-two of this chapter, must charge the tax imposed by this article to the purchaser on each gallon sold, unless otherwise exempt. If the taxes imposed by this article have not already been assumed or paid by such petroleum business on any quantity of such fuel for any reason, including, but not limited to, the expansion of such fuel as a result of temperature fluctuation, such petroleum business must remit such taxes to the commissioner on the return for the period in which such sale was made.

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

acknowledged in like manner as a certificate of designation as herein provided.

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

(c) Forfeiture penalty.--If any taxes, penalties or interest due under this article are not paid by a petroleum business which is a corporation, or any return required is not filed by such a petroleum business, and the tax commission is satisfied that the failure to make such payment or file such return is intentional, it may so report to the attorney general, who shall immediately bring an action in the name of the people of the state, for the forfeiture of the charter or franchise of any such petroleum business failing to make such payment, or file

such return, and if it be found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of such charter and for its dissolution if such petroleum business is a domestic corporation and, if such petroleum business is a foreign corporation, for the annulment of its franchise to do business in this state.

(d) Dissolution penalty.--Whenever any petroleum business which is a corporation (excepting those covered by subdivision (e) of this section) has failed to file a return for a period of six consecutive months or has been delinquent in the payment of taxes for any six taxable months duly assessed pursuant to this article, all the authority and powers conferred on the commissioner of taxation and finance and the secretary of state by section two hundred three-a of this chapter and all of the provisions of such section shall have full force and effect in respect of and shall be applicable to such a petroleum business.

(e) Annulment penalty.--Whenever any petroleum business which is a foreign corporation has failed to file a return or has been delinquent in the payment of taxes duly assessed pursuant to this article for the periods of time specified in subdivision (d) of this section, all the authority and powers conferred on the commissioner of taxation and finance and the secretary of state by section two hundred three-b of this chapter and all of the provisions of such section shall have full force and effect in respect of and shall be applicable to such a petroleum business.

§ 312. Deposit and disposition of revenue.-- (a) Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, two thousand one, from the taxes imposed by section three hundred one-a of this article, (i) initially eighty and three-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article and (ii) nineteen and seven-tenths percent shall be deposited in such mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the manner provided by subdivision eleven of section one hundred eighty-two-a of this chapter. Provided, further that on or before the

twenty-fifth day of each month commencing with April, two thousand one, the comptroller shall deduct the amount of six hundred twenty-five thousand dollars prior to any deposit or disposition of the taxes, interest, and penalties collected or received pursuant to such section three hundred one-a and shall deposit such amount in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this article. Provided, further, that commencing January fifteenth, nineteen hundred ninety-one, and on or before the tenth day of March and the fifteenth day of June and September of such year, the commissioner shall, based on information supplied by taxpayers and other appropriate sources, estimate the amount of the utility credit authorized by section three hundred one-d of this article which has been accrued to reduce tax liability under section one hundred eighty-six-a of this chapter during the period covered by such estimate and certify to the state comptroller such estimated amount. The comptroller shall forthwith, after receiving such certificate, deduct the amount of such credit so certified by the commissioner prior to any deposit or disposition of the taxes, interest and penalties collected or received pursuant to such section three hundred one-a and shall pay such amount so certified and deducted into the state treasury to the credit of the general fund. Also, subsequently, during the fiscal year when the commissioner becomes aware of changes or modifications with respect to actual credit usage, the commissioner shall, as soon as practicable, issue a certification setting forth the amount of any required adjustment to the amount of actual credit usage previously certified. After receiving the certificate of the commissioner with respect to actual credit usage or modification of the same, the comptroller shall forthwith adjust general fund receipts and the revenues to be deposited or disposed of under this article to reflect the difference so certified by the commissioner. The commissioner shall not be liable for any overestimate or underestimate of the amount of the utility credit which has been accrued to reduce tax liability under such section one hundred eighty-six-a. Nor shall the commissioner be liable for any inaccuracy in any certificate with respect to the amount of such credit actually used or any required adjustment with respect to actual credit usage, but the commissioner shall as soon as practicable after discovery of any error adjust the next certification under this section to reflect any such error.

Prior to making deposits as provided in this section, the comptroller shall retain such amount as the commissioner may determine to be necessary, subject to the approval of the director of the budget, for reasonable costs of the department in administering and collecting the taxes deposited pursuant to this section and for refunds and reimbursements with respect to such taxes, out of which the comptroller shall pay any refunds or reimbursements of such taxes to which taxpayers shall be entitled.

(b) Notwithstanding any other provision of law, all taxes, interest, and penalties collected or received on or after December first, two thousand seventeen from the taxes imposed by section three hundred one-e of this article shall be deposited in the aviation purpose account of the dedicated highway and bridge trust fund established by section eighty-nine-b of the state finance law.

§ 313. Limitation of time.--The provisions of the civil practice law and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article; provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations herein provided for shall not apply to any transfer from a petroleum business to a person with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee, or any subsequent grantee controlled by such petroleum business or which has any community of interest with it, either through stock ownership or otherwise.

§ 314. Secrecy.--(a) General. Except in accordance with proper

judicial order or as otherwise provided by law, it shall be unlawful for any tax commissioner, any officer or employee of the department of taxation and finance, or any person who, pursuant to this section, is permitted to inspect any return, or to whom any information contained in any return is furnished, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return filed pursuant to this article, to divulge or make known in any manner the amount of income or gross receipts or any particulars set forth or disclosed in any return under this article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state or the commissioner of taxation and finance in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more. The commissioner may, nevertheless, publish a copy or a summary of any determination or decision rendered after the formal hearing provided for in this chapter. Nothing herein shall be construed to prohibit the delivery to a petroleum business or its duly authorized representative of a copy of any return filed by it, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the disclosure of data other than taxpayer identity information from a return or returns of one or more petroleum or fossil fuel businesses to the department of environmental conservation or the New York state energy research and development authority for the purpose of implementing the New York state climate change superfund act, the climate leadership and community protection act, chapter one hundred six of the laws of two thousand nineteen, promulgation of regulations thereunder, and achievement of the statewide greenhouse gas emission limits, as defined and established in article

seventy-five of the environmental conservation law, or the publication of delinquent lists showing the names of petroleum businesses who have failed to pay their taxes at the time and in the manner provided by section three hundred eight of this article together with any relevant information which in the opinion of the commissioner may assist in the collection of such delinquent taxes; or the inspection by the attorney general or other legal representatives of the state of the return of any petroleum business which shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner or the attorney general or has been instituted; or the inspection of the returns of any petroleum business by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by such petroleum business under this article. Provided, further, nothing herein shall be construed to prohibit the disclosure of taxpayer identity information, including name, mailing address and taxpayer identifying number (social security account number, or such other number as has been assigned by the secretary of the United States treasury or such secretary's delegate, or by the commissioner of taxation and finance), with respect to persons who are registered as residual petroleum product or aviation fuel businesses under this article or as distributors of motor fuel or diesel motor fuel or kero-jet fuel only for the purpose of article twelve-A of this chapter or this article, whose registration as a residual petroleum product business or as such distributor has been cancelled or suspended pursuant to this article or such article twelve-A or whose application for registration as a residual petroleum product business or as such distributor has been refused pursuant to this article or such article twelve-A. In addition, the commissioner may disclose the fact that a person is not registered as a residual petroleum business under this article or as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only under article twelve-A of this chapter. Information disclosed pursuant to this subdivision shall not, by itself, be construed as proof of compliance or noncompliance with the provisions of this chapter.

(b) Penalty for violation.--(1) Any officer or employee of the state who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public

office in this state for a period of five years thereafter.

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

(c) Exceptions regarding the United States, other states and certain municipal proceedings.--Notwithstanding the provisions of subdivision (a) of this section, the tax commission may permit the secretary of the treasury of the United States or his delegates, or the proper officer of any other state charged with tax administration, or the authorized representative of either such officer, to inspect the returns filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply information concerning an item contained in any such return, or disclosed by an investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the secretary of the treasury of the United States or his delegates such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury or his delegates provided the laws of the United States grant substantially similar powers to the secretary of the treasury or his delegates. Where the commissioner of taxation and finance has so authorized use of returns or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other tax information; and provided further that such commission may furnish any municipality with such information contained in the returns filed under this article as it may consider proper for use in any certiorari or condemnation proceeding.

(d) Exceptions regarding city income taxes.--Notwithstanding the provisions of subdivision (a) of this section, the tax commission may

permit the officer charged with the administration of an income tax imposed by any city of the state of New York, or the authorized representative of such officer, to inspect the returns filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or his delegates and the legal representative of such city such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his delegates or by such legal representative of such city, provided the local law of such city grants substantially similar powers to the city officer charged with the administration of the city income tax or his delegates. Where the commissioner of taxation and finance has so authorized use of returns or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other tax information.

(e) Exceptions regarding depositories.--Notwithstanding the provisions of subdivision (a) of this section, the commissioner of taxation and finance, in such commissioner's discretion, may require or permit any or all petroleum businesses liable for any tax imposed by this article to make payment of any tax, penalty or interest imposed by this article to banks, banking houses or trust companies designated by the commissioner and to file returns with such banks, banking houses or trust companies as agents of the commissioner, in lieu of making any such payment directly to the commissioner. However, the commissioner shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section three

hundred twelve of this article.

(f) Disclosure of certain information where more than one person is subject to penalty. If the commissioner determines that a person is liable for a penalty under subdivision two of section two hundred eighty-nine-b of this chapter (as applicable to this article under section three hundred fifteen of this article) with respect to any failure, upon request in writing of such person, the commissioner shall disclose in writing to such person (1) the name of any other person whom the commissioner has determined to be liable for such penalty with respect to such failure, and (2) whether the commissioner has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

(g) Cooperation with investigations by certain committees of the United States Congress.--(1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the

general municipal law; a member of the state legislature; or a judge or justice of the unified court system, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 315. Practice and procedure.--(a) The provisions of subsections (g) and (j) of section one thousand ninety-two, section one thousand ninety-three and article twelve-A of this chapter, including those provisions of such article twelve-A relating to penalty and interest, shall apply to the administration of and procedure with respect to the tax imposed under this article in the same manner and with the same force and effect as if the language of such subsections (g) and (j), section one thousand ninety-three and article twelve-A had been incorporated in full into this article and had expressly referred to the

tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article or that the provisions of such article twelve-A are inconsistent with the provisions of such subsections (g) and (j) or with such section one thousand ninety-three.

(b) Joint administration of taxes. In addition to the powers granted to the commissioner in this chapter, the commissioner is hereby authorized to make provisions for the joint administration, in whole or in part, of the taxes imposed by articles twelve-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter upon motor fuel and diesel motor fuel and the taxes imposed by this article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the commissioner's functions under such articles, and any returns, forms, statements, documents or information to be submitted to the commissioner under such articles, any books and records to be kept for purposes of the taxes imposed or authorized to be imposed by such articles, any schedules of amounts to be collected under such articles, any registration required under such articles, and the payment of taxes under such articles, shall be on a joint basis with respect to the taxes imposed by or pursuant to such articles. Provided, notwithstanding any provision of this article to the contrary, in the furtherance of joint administration, the provisions of subdivision one of section two hundred eighty-five-a and subdivision one of section two hundred eighty-nine-c of this chapter shall apply to the taxes imposed under this article with the same force and effect as if those provisions specifically referred to the taxes imposed hereunder and all the products with respect to which the taxes are imposed under this article. Provided, further, a reimbursement (or credit) of taxes imposed under this article shall be available to subsequent purchasers of motor fuel, diesel motor fuel or residual petroleum product under the circumstances specified in subdivision eight of section two hundred eighty-nine-c of this chapter with respect to the export of such products. In addition, all the provisions of subdivision one of section two hundred eighty-six of this chapter shall be applicable to all of the products included in the measure of the tax imposed by this article and the powers of the commissioner in administering the tax imposed by this article shall

include these set forth in such subdivision. Moreover, the commissioner, in order to preserve the revenue from the tax imposed by this article, shall, by regulation, require that the movement of residual petroleum product into or in this state be accompanied by a tracking document. Also, the commissioner may require (i) that any returns, forms, statements or other document with respect to motor fuel or diesel motor fuel required of transporters or terminal operators under such article twelve-A of this chapter apply with the same force and effect to persons transporting or storing residual petroleum product, (ii) a certification that particular gallonage of motor fuel, diesel motor fuel or residual petroleum product has been included in the measure of the tax imposed by this article and such tax has been paid, and (iii) that the certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter be expanded to include the tax imposed by this article.

ARTICLE 14

LAWS REPEALED; WHEN TO TAKE EFFECT

Section 320. Laws repealed.

321. When to take effect.

§ 320. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 321. When to take effect. This chapter shall take effect immediately.

ARTICLE 18

TAXES ON ALCOHOLIC BEVERAGES

Section 420. Definitions.

421. Registration of distributors.

422. Bonds of distributors.

423. Cancellation of registration of distributors.

- 424. Taxes imposed.
- 425. Special provision as to imposition of taxes on certain alcoholic beverages.
- 425-a. Presumption of taxability.
- 426. Records to be kept by brand owners, distributors, owners and others.
- 427. Requirement and content of invoice on the sale of liquors.
- 428. Records and reports of transportation.
- 429. Payment of tax; returns.
- 430. Determination of tax.
- 431. Proceedings to recover tax.
- 432. Tax to be paid but once; foreign and interstate commerce; injunction.
- 433. Penalties and interest.
- 434. Refunds.
- 434-a. Mailing rules; holidays.
- 435. Deposit and disposition of revenue.
- 436. General powers of the tax commission.
- 437. Returns to be secret.
- 438. Sale of stamps authorized.
- 445. Local taxes on beer and liquor by a city of one million or more.

§ 420. Definitions. As used in this article:

1. "Person" includes an individual, copartnership, limited liability company, society, association, corporation, joint stock company, and any combination of individuals and also an executor, administrator, receiver, trustee or other fiduciary.

2. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process produced.

3. "Alcoholic beverages" mean and include ciders, as defined by the alcoholic beverage control law, beers, wines or liquors.

4. (a) "Distributor" when used with respect to alcoholic beverages other than liquors means any person who imports or causes to be imported into this state any such alcoholic beverages which are or will be offered for sale or used for any commercial purpose; any purchaser of warehouse receipts for such alcoholic beverages stored in a warehouse in this state who causes such beverages to be removed from such warehouse; and also any person who produces, distills, manufactures, brews, compounds, mixes or ferments any such alcoholic beverages within this state for sale, except (i) a person who manufactures, mixes or compounds such alcoholic beverages the ingredients of which consist only of alcoholic beverages on which the taxes imposed by this article have been paid, and (ii) a person who mixes or compounds such alcoholic beverages with non-alcoholic ingredients for sale and immediate consumption on the premises, who shall be a distributor only with respect to the ingredients which consist of alcoholic beverages upon which the taxes imposed by this article have not been paid.

(b) "Distributor" when used with respect to liquors means any person who imports or causes to be imported into this state liquors for sale or use in this state; any purchaser of warehouse receipts for liquors stored in a warehouse in this state who causes liquors to be removed from such warehouse; and also any person who produces, distills, manufactures, compounds, mixes or ferments any liquors within this state for sale, except (i) a person who manufactures, mixes or compounds liquors the ingredients of which consist only of alcoholic beverages on which the taxes imposed by this article have been paid, and (ii) a person who mixes or compounds liquors with non-alcoholic ingredients for sale and immediate consumption on the premises, who shall be a distributor only with respect to the ingredients which consist of alcoholic beverages upon which the taxes imposed by this article have not been paid.

5. "Beers" mean and include all alcoholic beer, lager beer, ale, porter, and stout, and all other fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor containing one-half of one per centum, or more, of alcohol by volume.

6. "Wines" mean and include wine (both still and sparkling and when fortified by the addition of alcohol or spirits), mead as defined in section three of the alcoholic beverage control law, fruit juice containing one-half of one per centum or more of alcohol by volume and all other beverages containing alcohol manufactured or produced by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar, provided the foregoing contain not more than twenty-four per centum of alcohol by volume, but shall not mean or include cider containing three and two-tenths per centum, or less, of alcohol by volume.

7. "Liquors" mean and include any and all distilled or rectified spirits, alcohol, brandy, cordial (whether the base therefor be wine or liquor), whiskey, rum, gin and all other distilled beverages containing alcohol, including all dilutions and mixtures of one or more of the foregoing, and also mean and include any alcoholic liquids which would be wines if the alcoholic content thereof were not more than twenty-four per centum by volume.

8. "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale.

9. "Owner" shall include any person selling or offering alcoholic beverages for sale at retail.

10. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever. The sale of warehouse receipts given upon the storage of alcoholic beverages shall not be construed as a sale of the beverages represented by such receipts.

11. "Gallon" means one hundred twenty-eight fluid ounces; "quart" means thirty-two fluid ounces.

12. "Use" means any compounding or mixing of alcoholic beverages with other ingredients or other treatment of the same in such manner as to render them unfit or unsuitable for consumption as a beverage and also

the actual consumption or possession for consumption of alcoholic beverages as a beverage or otherwise.

13. A distiller's license means a license issued by the state liquor authority pursuant to the provisions of the alcoholic beverage control law to manufacture liquors or wines or to brew beers, a wholesaler's license means a license issued by the state liquor authority pursuant to the provisions of the alcoholic beverage control law to sell liquors, wines or beers at wholesale and a retailer's license means a license issued by the state liquor authority pursuant to the provisions of the alcoholic beverage control law to sell liquors, wines or beers at retail for on or off premises consumption.

14. "Noncommercial importer" means a person other than a distributor who imports or causes to be imported into this state beers or wines, except that such person shall not be a noncommercial importer where such person imports or causes to be imported into this state such alcoholic beverages in the quantities and under the conditions provided by subdivision four of section four hundred twenty-four. Such term is inapplicable with respect to liquors.

15. "Liter" means a metric unit of capacity equal to one thousand cubic centimeters of alcoholic beverages and equivalent to thirty-three and eight hundred fourteen thousandths fluid ounces.

16. "Brand owner" means any person who is a manufacturer of any liquor or wine for which a brand or trade name label has been registered with and approved by the state liquor authority pursuant to section one hundred seven-a of the alcoholic beverage control law. For purposes of this subdivision the term manufacturer includes a distiller, importer, vintner or rectifier.

§ 421. Registration of distributors. 1. General. The commissioner, upon the application of a distributor, shall register such distributor in suitable books to be kept by the department for that purpose, conditioned upon the obtaining of appropriate licenses pursuant to the

alcoholic beverage control law, and the continuance of such license shall be a continuing condition of registration as a distributor under this article. The application shall be in a form and contain such data as the commissioner shall prescribe. No distributor, unless so registered, shall make any sale of alcoholic beverages within this state, except a sale, if any, as to which this state is without power to impose such condition. No person, unless so registered, shall (i) import or cause any liquors to be imported in this state for sale or use within this state, (ii) purchase a warehouse receipt and pursuant to such purchase then cause liquors covered by such receipt to be removed from a warehouse in this state or (iii) except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this article, produce, distill, manufacture, compound, mix or ferment any such liquors within this state for sale. Provided, however, that the commissioner may exclude from registration requirements any person who is a distributor of liquors solely by reason of the importation into this state of no more than ninety liters of liquors during a one-year period for such person's personal use and consumption to register as a distributor with respect to liquor. Provided, further, that an abbreviated registration in the form of a permit, without a bond, may be instituted by the commissioner for the purpose of authorizing the importation of up to three hundred sixty liters of liquors per year into this state by an individual for such individual's personal use and consumption in this state.

2. Temporary restraining order and permanent injunction against unlawful importation and a forfeiture of unlawfully imported or produced liquors. (a) In an action commenced pursuant to this subdivision whenever evidence is furnished by the commissioner showing a substantial likelihood that a person not registered as a distributor as required by this article has imported or may import liquors into this state or caused or may cause liquors to be imported into this state for sale or use in this state or has produced, distilled, manufactured, compounded, mixed or fermented or may produce, distill, manufacture, compound, mix or ferment liquors within the state or, pursuant to a purchase of a warehouse receipt, has caused or may cause liquors covered by such receipt to be removed from a warehouse in this state, the court, taking

into consideration the fungible nature of such liquors, may make a temporary order without notice prohibiting such person and his agents from selling, transferring or otherwise disposing of any liquors or any liquors and also prohibiting all other persons in possession of or having control over the same from selling, releasing, transferring or otherwise disposing of any liquors imported or caused to be imported, produced, distilled, manufactured, compounded, mixed or fermented, sold or transferred or removed by such person not so registered pending a hearing for a preliminary injunction.

(b) Upon granting a temporary order, the court shall direct that a hearing be held at the earliest possible time upon such notice and service as the court shall direct. Where, after such opportunity for a hearing, the court determines that there is a likelihood that the commissioner will prevail in such action, the court may grant a preliminary injunction restraining the sale, release, transfer or other disposition of liquors subject to the temporary order.

(c) (1) Whenever the commissioner shall discover that any person not registered as a distributor as required by this article has imported liquors into this state or caused liquors to be imported into this state for sale or use in this state or has produced, distilled, manufactured, compounded, mixed or fermented liquors within the state or, pursuant to a purchase of a warehouse receipt, has caused liquors covered by such receipt to be removed from a warehouse in this state, the commissioner may commence an action in supreme court for a permanent injunction and forfeiture of liquors. If it is established by a preponderance of the evidence that liquors were imported or caused to be imported into this state for sale or use in this state, were produced, distilled, manufactured, compounded, mixed or fermented, or were caused to be removed from a warehouse in this state by the purchaser of a warehouse receipt with respect to such liquors, by any person not registered as a distributor, as required by this article, the court shall grant a judgment (i) permanently enjoining such person and his agents from selling, transferring or otherwise disposing of any such liquors or any liquors within this state and (ii) declaring the forfeiture of any liquors that were so imported, caused to be imported, produced, distilled, manufactured, compounded, mixed, fermented or removed by such person.

(2) With respect to liquors that were imported, caused to be imported, produced, distilled, manufactured, compounded, mixed, fermented or removed by a person not registered as a distributor as required by this article or that were unlawfully sold or transferred by such person, if it is established by a preponderance of the evidence that any other person in possession of or having control over such liquors was not a purchaser or transferee in good faith of such liquors with respect to the fact that such liquors were so imported, caused to be imported, produced, distilled, manufactured, compounded, mixed, fermented or removed by a person not registered as a distributor as required by this article or that such liquors were so unlawfully sold or transferred by such person, the court shall grant a judgment (i) permanently enjoining such other person and such person's agents from selling, releasing, transferring or otherwise disposing of any such liquors and (ii) declaring the forfeiture of such liquors in the possession or under the control of such other person.

(d) The commissioner may, at any time subsequent to the granting of the temporary order pursuant to paragraph (a) of this subdivision, with the approval of the court, consent to a sale of liquors subject to such temporary order which is in the possession or under the control of a person other than the person or the agent of the person who imported, caused to be imported, produced, distilled, manufactured, compounded, mixed, fermented, removed or unlawfully sold or transferred such liquors. As a condition of granting permission to a sale of liquors pursuant to this subdivision, the commissioner shall require the payment of all taxes, penalties and interest imposed by and pursuant to the authority of this chapter with respect to such liquors.

(e) (1) At any time during the pendency of an action under this section, the liquors subject to a temporary, preliminary or permanent order hereunder may be released from the scope of such order if there is given an undertaking, in an amount equal to the market value of such liquors plus any excise, state and local sales and use and federal excise taxes, to the effect that there will be paid to the commissioner the amount of the market value of such liquors and such taxes in the event that such liquors are adjudged forfeited.

(2) Any person enjoined by a temporary order or a preliminary injunction issued pursuant to this subdivision or other person

interested in any such liquors may move at any time, on notice to all parties, to vacate or modify it.

(f) The procedures of the civil practice law and rules applicable to temporary restraining orders, preliminary injunctions and permanent injunctions not inconsistent with this subdivision shall apply to temporary orders, preliminary injunctions and permanent injunctions issued under this subdivision. The procedural provisions set forth in paragraph three of subdivision (d) and in subdivision (j) of section eighteen hundred forty-five of this chapter shall apply to the forfeiture proceedings under this subdivision and, in respect to a declaration of forfeiture under this subdivision, the court may direct the commissioner to sell or otherwise dispose of such forfeited liquors on such conditions the commissioner deems most advantageous and just under the circumstances. The commissioner shall not be required to file any undertaking in connection with an action pursuant to this subdivision.

§ 422. Bonds of distributors. The tax commission may require any distributor to file with the department of taxation and finance a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in the state or other security acceptable to the tax commission, in such amount as the tax commission may fix, to secure the payment of any sums due from such distributor pursuant to this article. The tax commission may require that such a bond or other security be filed before a distributor is registered, or at any time when in its judgment the same is necessary as a protection to the revenues under this article. If securities are deposited as security under this subdivision, such securities shall be kept in the joint custody of the comptroller and the commissioner of taxation and finance and may be sold by the tax commission if it becomes necessary so to do in order to recover any sums due from such distributor pursuant to this article; but no such sale shall be had until after such distributor shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article, shall be returned to such distributor.

§ 423. Cancellation of registration of distributors. The registration of any distributor may be cancelled by the commissioner upon its failure to file a bond or other security when required, and the registration of a distributor may be cancelled by the commissioner upon its failure to comply with any of the provisions of this article or any reasonable requirement, rule or regulation adopted pursuant to this article by the department of taxation and finance or by the commissioner. All the provisions of subdivisions four through six and eight through ten of section two hundred eighty-three of this chapter relating to registration of distributors of motor fuel shall be applicable to the registration of distributors under this article with the same force and effect as if the language of those subdivisions had been incorporated in full in this section and had expressly referred to the registration of distributors under this article and the tax imposed by this article, with such modification as may be necessary in order to adapt the language of such provisions to the provisions of this article, provided, specifically, that the term "motor fuel" shall be read as "alcoholic beverages". Provided, however, a registration shall be cancelled immediately, upon cancellation or revocation for cause of a license under the alcoholic beverage control law. A distributor shall immediately inform the department in writing of any change in its name or address, and a corporate distributor shall immediately inform the department, in writing, of any change in its name, or in its officers or directors, or their residence addresses.

§ 424. Taxes imposed. 1. There are hereby levied and imposed on a distributor and a noncommercial importer excise taxes at the following rates:

- (a) Fourteen cents per gallon upon beers;
- (b) Thirty cents per gallon upon still wines, except cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be three and seventy-nine hundredths cents per gallon;
- (c) Thirty cents per gallon upon artificially carbonated sparkling

wines, except artificially carbonated sparkling cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be three and seventy-nine hundredths cents per gallon;

(d) Thirty cents per gallon upon natural sparkling wines, except natural sparkling cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be three and seventy-nine hundredths cents per gallon;

(e) Sixty-seven cents per liter upon liquors containing not more than twenty-four per centum of alcohol by volume except liquors containing not more than two per centum of alcohol by volume, upon which the tax shall be zero; and

(f) One dollar and seventy cents per liter upon all other liquors; when sold or used within this state, except when sold or used under such circumstances that this state is without power to impose such tax or when sold to the United States and except beers when sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations, directives and policy statements of such an agency applicable to such sales, and except when sold to professional foreign consuls-general, consuls and vice-consuls who are nationals of the state appointing them and who are assigned to foreign consulates in this state, provided that American consular officers of equal rank who are citizens of the United States and who exercise their official functions at American consulates in such foreign country are granted reciprocal exemptions; provided, however, that the commissioner may permit the sale of alcohol without tax to a holder of any industrial alcohol permit, alcohol permit or alcohol distributor's permit, issued by the state liquor authority, and by the holder of an alcohol distributor's permit, class A, issued by such authority to a holder of a distiller's license, class B, or a winery license, issued by such authority and may also permit the use of alcohol for any purpose other than the production of alcoholic beverages by such holders without tax; provided also that the commissioner may permit the sale of cider without tax by a holder of a cider producer's license issued by the state liquor authority to a holder of a cider producer's license or a cider wholesaler's license issued by such authority.

(g) For purposes of this chapter, it is presumed that liquors are possessed for the purpose of sale in this state if the quantity of liquors possessed in this state, imported or caused to be imported into this state or produced, distilled, manufactured, compounded, mixed or fermented in this state exceeds ninety liters. Such presumption may be rebutted by the introduction of substantial evidence to the contrary. In any case where the quantity of alcoholic beverages taxable pursuant to this article is a fractional part of one liter (or one gallon in the case of beers) or an amount greater than a whole multiple of liters (or gallons in the case of beers), the amount of tax levied and imposed on such fractional part of one liter (or one gallon in the case of beers), or fractional part of a liter (or gallon) in excess of a whole multiple of liters or gallons shall be such fractional part of the rate imposed by paragraphs (a) through (f).

Notwithstanding any other provision of this article, the commissioner may permit the purchase of alcoholic beverages without tax by a person registered as a distributor under section four hundred twenty-one of this article from another person so registered, in which event the alcoholic beverage so purchased shall be subject to the taxes imposed by this article in the hands of the purchaser in the same manner and to the same extent as if such purchaser had imported or caused the same to be imported into this state or had produced, distilled, manufactured, brewed, compounded, mixed or fermented the same within this state.

2. Such taxes shall be due on the twentieth day of the month following the month in which such alcoholic beverages are sold or used by such distributor or noncommercial importer, regardless of whether or not a return is filed as required by this article.

3. Beers within this state when chapter one hundred forty-two of the laws of nineteen hundred thirty-three took effect, wines within this state when chapter two hundred twenty-three of the laws of nineteen hundred thirty-three took effect and liquors within this state when chapter eight hundred eighteen of the laws of nineteen hundred thirty-three took effect shall also be subject to such taxes when sold within this state or used for commercial purposes within this state,

except as provided for in subdivision one of this section, unless the taxes imposed by said chapters shall have been paid with respect to such alcoholic beverages prior to April second, nineteen hundred thirty-four, and the person selling or commercially using such alcoholic beverages shall be deemed a distributor for the purposes of this article; and such alcoholic beverages shall be subject to all of the provisions of this article to the same extent as if the same had been imported into this state or produced, distilled, manufactured, brewed, compounded, mixed or fermented within this state after such chapters became effective. If, prior to the taking effect of such chapters, a contract of sale of alcoholic beverages was made, and delivery thereof pursuant to such contract is made within this state on or after April second, nineteen hundred thirty-four, from a stock of alcoholic beverages which is then subject to the taxing power of this state, the vendor shall be deemed a distributor for the purposes of this article, and such alcoholic beverages shall be deemed to be sold, and shall be subject to such taxes, at the time of such delivery, unless such taxes shall have been paid with respect to such alcoholic beverages prior to April second, nineteen hundred thirty-four.

4. (a) Notwithstanding any other provision of this article, there shall be exempt from the taxes imposed under this article, per month, one-quart of alcoholic beverages (or one gallon of such beverages in the case of a person arriving directly or indirectly from American Samoa, Guam or the Virgin Islands of the United States not more than one-quart of which shall have been acquired elsewhere than in such insular possessions):

(i) purchased outside this state as an incident to a journey from which the purchaser is returning and

(ii) not to be offered for sale or used for any commercial purpose, provided such alcoholic beverages accompany such person on his return to this state and provided, further, that in the case of a person arriving in this state from other than a state of the United States (including the district of Columbia), the Virgin Islands of the United States or a contiguous country maintaining a free zone or free port, such person shall have remained beyond the territorial limits of the United States for a period of not less than forty-eight hours.

(b) Provided, however, where the amounts purchased outside this state or brought in exceed the amounts specified in paragraph (a) of this subdivision but are not in excess of one liter in the case of the references to one-quart or four liters in the case of the reference to one gallon, and where no duty is required by the laws of the United States to be paid on such amounts, such metric standards of fill shall be substituted for one-quart and one gallon, respectively, and such amounts shall be exempt from tax under the conditions provided for in paragraph (a) of this subdivision.

5. Notwithstanding any other provision of this article, there shall be exempt from the taxes imposed under this article, the sale of wine at retail in sealed containers to a regularly organized church, synagogue or religious organization for sacramental purposes, provided such wine shall have been purchased in this state from a distributor, and the purchaser shall have given the distributor a written statement signed by such purchaser setting forth its name and address, its declaration that it is a regularly organized church, synagogue or religious organization and that the wine purchased shall be used solely for sacramental purposes and any other information or proof that the tax commission may require. Where such a statement shall have been furnished to the distributor by a purchaser which shall not have been a regularly organized church, synagogue or religious organization or the wine shall be for other than sacramental purposes, and in reliance upon such statement the wine shall not have been included as taxable in a return made by a distributor, the purchaser shall file a return and pay the tax in the manner provided for in section four hundred twenty-nine.

6. Notwithstanding any other provision of this article, there shall be exempt from the taxes imposed under this article, alcoholic beverages furnished by a licensed producer of alcoholic beverages at no charge to a customer or prospective customer at a tasting held in accordance with the alcoholic beverage control law for consumption at such tasting.

§ 425. Special provision as to imposition of taxes on certain alcoholic beverages. If a person shall receive any alcoholic beverages

from the distributor with respect thereto, under such circumstances so as to preclude the collection of the taxes under this article, because this state was without power to impose such taxes under this article against such distributor by reason of the constitution or the law of the United States enacted pursuant thereto or the constitution or laws of this state, and such person shall thereafter sell or use any such alcoholic beverages in such manner and under such circumstances as may subject the same to the taxing power of this state with respect to any sale or use thereof, such person shall be liable for the tax imposed by section four hundred twenty-four with respect to such sale or use, and shall make the same reports and returns, pay the same taxes and be subject to the other applicable provisions of this article relating to distributors, except that with respect to beers and wines such a person shall not be subject to the provisions of sections four hundred twenty-one and four hundred twenty-two of this article if such person does not offer such alcoholic beverages for sale or use such alcoholic beverages for any commercial purpose. Provided, further, that if the taxing power of this state does not extend to the imposition of such taxes on, and the requirement of payment of such taxes by, such person selling or using such beverages, then such person shall be required to collect such taxes from its purchaser on the sale of such beverages and to pay over such taxes to the commissioner. In such event, the same reports and returns relating to distributors, along with remittance, shall be required by such person and all the other provisions of this article relating to distributors shall apply. If such taxes are not so collected, then such purchaser shall, along with such person, be liable for such taxes.

§ 425-a. Presumption of taxability. For the purpose of the proper administration of the taxes imposed by this article and to prevent evasion thereof, it shall be presumed with respect to this chapter that all alcoholic beverages possessed or found in this state are subject to the taxes imposed by this article until the contrary is established by substantial evidence. Except with respect to a purchase at retail of beers or wines and a purchase at retail of ninety liters or less of liquors, no person shall purchase alcoholic beverages in this state

unless the taxes imposed by this article with respect to such beverages have been assumed by a distributor registered under this article or paid by such distributor pursuant to and in accordance with the manner provided herein and evidenced in accordance with the manner provided herein. In the case of liquors, such taxes shall be assumed by a distributor in accordance with the invoice required, and the certification of tax payment included therein, under section four hundred twenty-seven of this article; in the case of other alcoholic beverages, the taxes shall be assumed by such distributor pursuant to and in accordance with the rules or regulations of the department.

§ 426. Records to be kept by brand owners, distributors, owners and others. Every brand owner, distributor, owner or other person shall keep a complete and accurate record of all purchases and sales or other dispositions of alcoholic beverages, and a complete and accurate record of the number of gallons of beers produced, manufactured, brewed or fermented and liters of all other alcoholic beverages produced, distilled, manufactured, brewed, compounded, mixed or fermented. Such records shall be in such form and contain such other information as the tax commission shall prescribe. Said commission, by rule or regulation, also may require the delivery of statements to purchasers of alcoholic beverages, and prescribe the matters to be contained therein. Such records and statements, unless required by the tax commission to be preserved for a longer period, shall be preserved for a period of one year and shall be offered for inspection at any time upon oral or written demand by the commissioner of taxation and finance or his duly authorized agents, and every such distributor, brand owner, owner or other person shall make such reports to the department of taxation and finance as may be required by the tax commission. Nothing in this section contained shall be construed to require the keeping of a record of the purchase or disposition of alcoholic beverages by a consumer thereof, except by a person who uses the same for commercial purposes, or of the sale of alcoholic beverages at retail.

§ 427. Requirement and content of invoice on the sale of liquors. 1.

Every sale of liquors, except a sale at retail of ninety liters or less, shall be evidenced by and recorded on an individual, serially numbered invoice, and, with respect to each such sale, the seller therein shall make and complete such invoice which shall contain the information required by this section and give the same to the purchaser at the time of delivery. The seller shall sign and date the invoice required by this section and certify the entire content of such invoice.

2. Each invoice required by subdivision one of this section shall state separately thereon:

(a) the identifying number of such invoice;

(b) the name of the seller;

(c) the current state liquor authority number of the seller and, if registered as a distributor, the registration number (certificate number) assigned to such seller by the department must also be set forth;

(d) the address of the licensed premises of the seller and, if different from such premises, the address of the premises from which the liquors listed on such invoice were removed for delivery to the purchaser;

(e) the name of the purchaser;

(f) the current state liquor authority number of the purchaser;

(g) the date of the delivery of the liquors;

(h) the address of the licensed premises of the purchaser and, if different from such premises, the address of the premises to which the liquors listed on such invoice are to be delivered by the seller;

(i) the size (in liters) and number of bottles of liquors sold, and its description, by brand name and price; and

(j) a certification with respect to tax payment to the effect that:

(i) in the case of a transaction with respect to which a city tax imposed pursuant to section four hundred forty-five of this article applies, that is, where the sale is made to a purchaser whose licensed premises are within such city or is completed by delivery to a purchaser in such city:

(A) if the seller is a distributor of liquors registered under this article, that the seller has assumed payment of or has paid all New York state and city alcoholic beverage taxes with respect to the liquors

which are the subject of such transaction; or

(B) if such seller is not a registered distributor under this article, that such taxes have been assumed by or paid by an identified distributor registered under this article as evidenced by an invoice received by the seller pursuant to this section with respect to the liquors being sold and accepted in good faith by such seller; or

(C) where either or both New York state and city alcoholic beverage taxes have not been paid, the seller shall set forth this fact and, if applicable, a statement of the exemption from tax which applies to such sale; and

(ii) with respect to a transaction to which subparagraph (i) of this paragraph does not apply:

(A) if the seller is a distributor of liquors registered under this article, that such seller has assumed payment of or has paid all New York state alcoholic beverage taxes imposed under this article with respect to the liquors which are the subject of such transaction; or

(B) if such seller is not a registered distributor, that the taxes have been assumed by or paid by an identified distributor registered under this article as evidenced by an invoice given to the seller pursuant to this section with respect to the liquors being sold and accepted in good faith by such seller; or

(C) where the state alcoholic beverage taxes imposed under this article have not been paid with respect to such liquors, the seller shall set forth this fact and, if applicable, a statement of the exemption from tax which applies to such sale; or

(iii) in the case of a transaction which is the first sale of liquors in this state where the seller is a distiller or the exclusive agent of a distiller and both such seller and the purchaser are distributors of liquor registered under this article, the commissioner may provide that such distiller or exclusive agent need not set forth the certification required by this paragraph on the invoice required by this section.

3. Notwithstanding any provision to the contrary, every seller shall keep a duplicate original of the invoice required to be made and given to the purchaser for the period returns are required to be retained pursuant to this article.

4. Notwithstanding any provision to the contrary, every purchaser shall keep the invoice given by the seller pursuant to this section for the period returns are required to be retained pursuant to this article.

5. For purposes of this chapter, where the invoice required under this section is not furnished by the seller at the time of delivery, or where a person in possession of liquors does not possess such invoice with respect to such liquors, it shall be presumed that the taxes imposed by or pursuant to this article have not been assumed or paid by a distributor registered as such under this article. Such presumption may be rebutted by the introduction of substantial evidence to the contrary. In addition to any other civil and criminal penalties which may apply, any person who purchases alcoholic beverages without receiving an invoice from the seller as required by this section shall be jointly and severally liable to pay the taxes imposed by or pursuant to this article with respect to such beverages.

§ 428. Records and reports of transportation. 1. Every person transporting alcoholic beverages within this state, whether such transportation originates within or without this state, when required by the commissioner, shall keep a true and accurate record of all alcoholic beverages so transported, showing such facts with relation to such alcoholic beverages and their transportation as the commissioner may require. Such record shall be open to inspection by the representatives of the department at any time and the commissioner may require from any such person returns of all or any part of the information shown by such records.

2. The operator of a motor vehicle, as such term is defined in subdivision three of section two hundred eighty-two of this chapter, or any other means of transport of liquors in which more than ninety liters of liquors is being transported in this state must have in his or her possession a manifest, invoice or other document which shows the name and address of the person from whom such liquors were received and the date and place of receipt of such liquor and the name and address of every person to whom such operator is to make delivery of the same and

the place of delivery, together with the number of liters to be delivered to each person, and, if such liquor is being imported into the state in such motor vehicle or such other means of transport, the name of the distributor importing or causing such liquors to be imported into the state and such other information as the commissioner may require pursuant to rule or regulation. Every operator of such motor vehicle or such other means of transport shall at the request of a peace officer, acting pursuant to his special duties, a police officer, any representative of the department or any other person authorized by law to inquire into or investigate the transportation of such liquors, produce such manifest, invoice or other document for inspection. The person causing the operation of such motor vehicle or such other means of transport shall be responsible to cause the operator to keep in such operator's possession in such motor vehicle or such other means of transport the manifest, invoice or other document required by this section. The absence of the manifest, invoice or other document required by this section shall give rise to a presumption that the liquors being transported are being imported or caused to be imported into this state for sale or use therein by other than a registered distributor. Moreover, the absence of (1) the place of delivery of liquors on the manifest, invoice or other document with respect to liquors being imported into the state shall give rise to a presumption that such liquors are being imported into the state for sale or use in the state and (2) the name of a registered distributor on the manifest, invoice or other document with respect to liquors being imported into the state shall give rise to a presumption that such liquors are being so imported or caused to be imported into this state, for sale or use therein, by other than a registered distributor. Such presumptions may be rebutted by the introduction of substantial evidence to the contrary.

§ 429. Payment of tax; returns. 1. Every distributor, noncommercial importer or other person shall, on or before the twentieth day of each month, file with the department of taxation and finance a return, on forms to be prescribed by the commissioner and furnished by such department, stating separately the number of gallons, or lesser quantity, of beers, and the number of liters, or lesser quantity, of

wines and liquors sold or used by such distributor, noncommercial importer or other person in this state during the preceding calendar month, except that the commissioner may, if he or she deems it necessary to facilitate the efficient reporting and payment of the tax imposed by this article, require returns to be made at such times and covering such periods as he or she may deem necessary. Such return shall contain such further information as the commissioner shall require. The fact that the name of the distributor, noncommercial importer or other person is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such distributor, noncommercial importer or other person.

2. Each such distributor, noncommercial importer or other person shall pay to such department with the filing of such return, the tax imposed by this article, on each gallon, or lesser quantity, of beers and on each liter, or lesser quantity of all other alcoholic beverages sold or used by such distributor, noncommercial importer or other person in this state, as so reported, during the period covered by such return, except that, where a distributor has purchased alcoholic beverages prior to the expiration of the period covered by the return, upon which the taxes imposed by this article have been or are required to be paid by another distributor, a credit shall be allowed for the amount of such taxes.

3. All alcoholic beverages which have come into the possession of a distributor shall be deemed to have been sold or used by such distributor unless it shall be proved to the satisfaction of the tax commission that such alcoholic beverages have not been sold or used.

4. A distributor entitled to a refund under the provisions of section four hundred thirty-four of this chapter, in lieu of such refund, may take credit therefor on a return filed pursuant to this section, unless the tax commission shall withdraw such privilege.

5. The commissioner shall provide any brewer, as such term is defined in subdivision five of section three of the alcoholic beverage control law, or any distiller, as such term is defined in subdivision ten of section three of the alcoholic beverage control law, with the option to

file their tax returns electronically.

§ 430. Determination of tax. If a distributor, noncommercial importer or other person files a return under this article, but such return is incorrect or insufficient, the commissioner of taxation and finance shall determine the amount of tax due at any time within three years after the return was filed (whether or not such return was filed on or after the due date), and give written notice of such determination to the distributor, noncommercial importer or other person, except that if such distributor has not registered as required by this article, or fails to file a return or files a willfully false or fraudulent return with intent to evade the tax, such determination may be made at any time. Notwithstanding any of the foregoing provisions of this section, where, before the expiration of the time prescribed in this section for the determination of tax, both the commissioner of taxation and finance and the taxpayer have consented in writing to its determination after such time, the tax may be determined at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Any determination made pursuant to this section shall finally and irrevocably fix the tax unless the distributor, noncommercial importer or other person against whom it is assessed shall, within ninety days after the giving of notice of such determination, petition the division of tax appeals for a hearing, or unless the commissioner of taxation and finance of his own motion, shall redetermine the same. After such hearing, the division of tax appeals shall give notice of the determination of the administrative law judge to the distributor, noncommercial importer or other person liable for the tax and to the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter, but the proceeding may not be commenced unless the amount of tax stated or referred to in the decision, with penalties and interest thereon, if any, shall have been first deposited with the commissioner of taxation and finance, and an undertaking filed with him, in such

amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the decision confirmed, the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding, or at the option of the petitioner such undertaking may be in a sum sufficient to cover the tax, penalties, interest, costs and charges aforesaid, in which event the petitioner shall not be required to pay such tax, penalties and interest as a condition precedent to commencing the proceeding.

The remedy provided by this section for review of a decision of the tax appeals tribunal shall be the exclusive remedy available to any taxpayer to judicially determine the liability of such taxpayer for taxes under this article.

§ 431. Proceedings to recover tax. 1. Whenever any distributor, noncommercial importer or other person shall fail to pay, within the time limited herein, any tax which he is required to pay under the provisions of this article, the attorney-general shall, upon the request of the department of taxation and finance, enforce payment of such tax by civil action in the supreme court, in the name of the people of the state, against such distributor, noncommercial importer or other person for the amount of such tax, with interest. The proceeds of the judgment, if any, shall be paid to the department of taxation and finance.

2. Whenever any distributor, noncommercial importer or other person shall fail to pay, within the time limited herein, any tax which he is required to pay under the provisions of this article, the tax commission may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such distributor, noncommercial importer or other person, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the department of taxation and finance and to pay to it the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall

within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the distributor, noncommercial importer or other person mentioned in the warrant, and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the distributor, noncommercial importer or other person against whom the warrant is issued. Such lien shall not apply to personal property unless such warrant is also filed in the department of state. The said sheriff shall thereupon proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the tax commission shall have the same remedies to enforce the claim for taxes, penalties and interest against the distributor, noncommercial importer or other person as if the people of the state had recovered judgment against such distributor, noncommercial importer or other person for the amount of the tax.

3. In addition to the foregoing proceedings, in case of default of any distributor to pay, within the time limited herein, any tax, penalty or interest which he is required to pay under the provisions of this article or to file a bond, other security or a return as required by this article or by the tax commission, the tax commission may forward a written statement of the facts showing such default in payment of any tax, penalty or interest to the state liquor authority and may request the revocation or suspension of the license or licenses of such distributor on account of such default.

§ 432. Tax to be paid but once; foreign and interstate commerce; injunction. Nothing in this article shall be construed to require the payment to the department of taxation and finance of the taxes imposed by this article more than once on any quantity of alcoholic beverages sold or used within this state. No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States constitution and to the laws of the United States enacted pursuant thereto. The supreme court shall have jurisdiction to restrain the department, by injunction, from collecting a tax under this article upon any sale as to which, by reason of the United States constitution and the laws of the United States enacted pursuant thereto, such a tax cannot be imposed.

§ 433. Penalties and interest. 1. (a)(i) A distributor who or which fails to file a return or to pay any tax within the time required by or pursuant to this article (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of ten per centum of the amount of tax determined to be due as provided in this article plus one per centum of such amount for each month or fraction thereof during which such failure continues after the expiration of the first month after such return was required to be filed or such tax became due, not exceeding thirty per centum in the aggregate.

(ii) Any other person who fails to file a return or to pay any tax within the time required by or pursuant to this article, if such person does not offer alcoholic beverages for sale or use alcoholic beverages for any commercial purpose, shall be subject to a penalty of fifty per centum of the amount of tax determined to be due as provided in this article plus one per centum of such amount for each month or fraction thereof during which such failure continues after the expiration of the first month after such return was required to be filed or such tax become due.

(iii) In the case of a failure by a distributor or other person to file such return within sixty days of the date prescribed for filing of such return by or pursuant to this article (determined with regard to

any extension of time for filing), the penalties imposed by this subdivision shall not be less than the lesser of one hundred dollars or one hundred per centum of the amount required to be shown as tax on such return. For the purpose of the preceding sentence, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) If any amount of tax is not paid on or before the last date prescribed in this article for payment, interest on such amount at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

(c) If the tax commission determines that such failure was due to reasonable cause and not due to willful neglect, it shall remit all or part of such penalties. The tax commission shall promulgate rules and regulations as to what constitutes reasonable cause.

(d) If the failure to pay any tax within the time required by or pursuant to this article is due to fraud, in lieu of the penalties and interest provided for in paragraphs (a) and (b) of this subdivision, there shall be added to the tax (i) a penalty of two times the amount of tax due, plus (ii) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter for the period beginning on the last day prescribed by this article for the payment of such tax (determined without regard to any extension of time for paying) and ending on the day on which such tax is paid.

(e) The penalties and interest provided for in this subdivision shall be determined, assessed, collected and paid in the same manner as the taxes imposed by this article and shall be disposed of as hereinafter provided with respect to moneys derived from the tax. Unpaid penalties and interest under this subdivision may be recovered by the attorney-general in an action brought pursuant to section four hundred thirty-one of this article. Interest under this subdivision shall be

compounded daily.

2. For purposes of this chapter, the failure to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the department of taxation and finance, in Albany. For the purposes of this chapter, the certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this article, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

3. Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

§ 434. Refunds. 1. Whenever the commissioner of taxation and finance shall determine that any moneys received under the provisions of this article were paid in error, he may cause the same to be refunded, with interest, in accordance with such rules and regulations as he may prescribe, except that no interest shall be allowed or paid if the amount thereof would be less than one dollar. Such interest shall be at the overpayment rate set by the commissioner pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter, or if no rate is set, at the rate of six percent per annum, from the date when the tax, penalty or interest to be refunded was paid to a date preceding the date of the refund check by not more than thirty days. Provided, however, that for the purposes of this subdivision, any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day. Such moneys received under the provisions of this article which the commissioner shall determine were paid in error, may be refunded out of funds in the custody of the comptroller to the credit of such taxes provided an application therefor is filed with the commissioner within two years from the time the erroneous payment was made.

2. (a) Whenever (A) any person, other than a distributor hereinafter

in this paragraph referred to, shall use for non-beverage purposes any alcoholic beverages on which taxes are imposed by this article or (B) a regularly organized church, synagogue or religious organization shall use for sacramental purposes wine purchased by it in sealed containers at retail, and such alcoholic beverages referred to in clause (A) or wine referred to in clause (B) were not sold to such person or religious organization pursuant to a retailer's license and have been, to the satisfaction of the tax commission, included as taxable in a return made by a distributor, such person or religious organization shall be reimbursed the amount of the taxes thereon in the manner and subject to the conditions hereinafter specified. Whenever any distributor shall use for non-beverage purposes any alcoholic beverages on which he is required to pay the taxes imposed by this article, the tax commission may permit such distributor to report such alcoholic beverages as nontaxable.

(b) Any person holding a license issued by the state liquor authority, who, pursuant to such license, shall sell any alcoholic beverages, upon which taxes imposed by this article have been paid, under such circumstances that the state would be without power to impose the tax under this article, or for resale under like circumstances, may secure reimbursement for the amount of the taxes so paid in the manner and subject to the conditions specified in this subdivision, but in a case specified in this paragraph no refund shall be made under paragraph (a) of this subdivision.

(c) All claims for reimbursement under this subdivision must be filed within two years from the time of the nontaxable sale or use. Claims shall be made, in such form and containing such information as the tax commission shall prescribe. Claims for reimbursement under this subdivision, approved by the tax commission, shall be paid out of the funds deposited to the credit of the comptroller on account of the taxes imposed by this article.

3. If an agreement under the provisions of section four hundred thirty (extending the period for determination of tax imposed by this article) is made within the two-year period for the filing of a claim for reimbursement or an application for refund provided for in this section, the period for filing a claim for reimbursement or an application for

refund shall not expire prior to six months after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof.

§ 434-a. Mailing rules; holidays. 1. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the tax commission.

2. Any notice authorized or required under this article may be given by mailing it to the person for whom it is intended, in a postpaid envelope addressed to such person at the address given by him in his application for registration as a distributor or in the last return filed by him under this article or, if no application or return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of its receipt by the person to

whom addressed. Any period of time, which is determined according to the provisions of this article, for the giving of notice shall commence to run from the date of mailing of such notice.

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

4.(a) Any reference in subdivision one of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision one of this section to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner finds that any delivery service designated by such secretary is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this article, or may withdraw any such designation if the commissioner finds that a delivery service so designated is inadequate for the needs of the state. Any reference in subdivision one of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner and any reference in subdivision one of this section to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner.

(b) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner pursuant to the same criteria used by such secretary for

such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision one of this section. If the commissioner finds that any equivalent of registered or certified mail is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article.

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

§ 436. General powers of the tax commission. The powers conferred upon the tax commission by sections one hundred seventy-one and one hundred seventy-one-b of this chapter shall, so far as applicable, be exercisable with respect to the provisions of this article.

§ 437. Returns to be secret. 1. Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the tax commission, any tax commissioner, any officer or employee of the department of taxation and finance, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the contents or any other information relating to the business of a distributor, owner or other person contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the state liquor authority,

any county alcoholic beverage control board, the New York city alcoholic beverage control board or the tax commission in an action or proceeding under the provisions of this chapter or chapter three-b of the consolidated laws, or on behalf of the state or the tax commission in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the tax commission is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article or chapter three-b of the consolidated laws, when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or in an action or proceeding relating to the regulation or taxation of alcoholic beverages on behalf of officers to whom information shall have been supplied as provided in subdivision two of this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. The tax commission may, nevertheless, publish a copy or a summary of any decision rendered after the formal hearing provided for in section four hundred thirty of this chapter. Nothing herein shall be construed to prohibit the tax commission, in its discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report by or to a duly authorized officer or employee of the state liquor authority or of the New York city alcoholic beverage control board or of any county alcoholic beverage control board; or by or to the attorney-general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter or chapter three-b of the consolidated laws in which such returns or reports or the facts shown thereby are directly involved; or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a distributor or other person under this article; nor to prohibit the delivery to a distributor, owner or other person, or a duly authorized representative of such distributor, owner or other person of a certified copy of any return or report filed by such distributor, owner or other person pursuant to this article, nor to

prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof. Returns and reports shall be preserved for three years and thereafter until the tax commission orders them to be destroyed.

2. The tax commission, in its discretion and pursuant to such rules and regulations as it may adopt, may permit the commissioner of internal revenue of the United States, or the appropriate officers of any other state which regulates or taxes alcoholic beverages, or the duly authorized representatives of such commissioner or of any such officers, to inspect returns or reports made pursuant to this article, or may furnish to such commissioner or other officers, or duly authorized representatives, a copy of any such return or report or an abstract of the information therein contained, or any portion thereof, or may supply such commissioner or any such officers or such representatives with information relating to the business of a distributor, owner or other person making returns or reports hereunder. The tax commission may refuse to supply information pursuant to this subdivision to the commissioner of internal revenue of the United States or to the officers of any other state if the statutes of the United States, or of the state represented by such officers, do not grant substantially similar privileges to the tax commission of this state, but such refusal shall not be mandatory. Information shall not be supplied to the commissioner of internal revenue of the United States or the appropriate officers of any other state which regulates or taxes alcoholic beverages, or the duly authorized representatives of such commissioner or of any of such officers, unless such commissioner, officer or other representatives shall agree not to divulge or make known in any manner the information so supplied, but such officers may transmit such information to their employees or legal representatives when necessary, who in turn shall be subject to the same restrictions as those hereby imposed upon such commissioner, officer or other representatives.

3. (a) Any officer or employee of the state who willfully violates the provisions of subdivision one or two of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

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

4. Notwithstanding the provisions of subdivision one of this section, the tax commission, in its discretion, may require or permit any or all persons, distributors or owners liable for any tax imposed by this article to make payment of any tax, penalty or interest to banks, banking houses or trust companies designated by the tax commission and to file returns and reports with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section four hundred thirty-five.

5. (a) Notwithstanding the provisions of subdivision one of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns or reports specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to

vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return or report, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return or report, and any social security numbers, account numbers and residential address information.

(b) No returns or reports shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns or reports have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or reports or return or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns or reports are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 438. Sale of stamps authorized. 1. Notwithstanding any other provision of this article, the tax commission may by regulation provide that the taxes on alcoholic beverages shall be collected through the sale of stamps, to be prepared and sold by it. The tax commission shall have power to determine the form and denominations of such stamps and to prescribe by regulation the manner and time of affixation of such stamps

to containers of alcoholic beverages. It may provide for the sale of such stamps by duly authorized agents, but such stamps shall not be sold by any person not so authorized. The penalties and interest for failure to affix stamps, in case the same are prescribed by the tax commission, shall be the same as the penalties and interest in this article provided for failure to pay taxes. If stamps are so prescribed, any alcoholic beverages in containers to which stamps are required to be affixed shall be subject to confiscation by any duly authorized representative of the tax commission, any peace officer, acting pursuant to his special duties, or any police officer in case the stamps are not so affixed. Alcoholic beverages so confiscated may be sold by the tax commission to any person holding a proper license granted by the state liquor authority, and the proceeds of any such sale shall be paid into the treasury of the state.

2. In the event that stamps are prescribed all of the provisions of this article shall apply, so far as they may be or can be made applicable.

§ 445. Local taxes on beer and liquor by a city of one million or more. 1. Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city excise taxes on a distributor and a noncommercial importer at the following rates:

(a) Twelve cents per gallon upon beers and

(b) Twenty-six and four-tenths cents per liter on the liquors described in paragraph (f) of subdivision one of section four hundred twenty-four, when sold or used in such city.

Such local law shall provide that if prior to the date upon which the taxes go into effect, a contract of sale of any beer or other alcoholic beverages described above was made, and delivery thereof pursuant to such contract is made within the city imposing such taxes on or after the effective date thereof, the vendor shall be deemed a distributor, and such beer and other alcoholic beverages shall be deemed to be sold,

and shall be subject to the tax at the time of such delivery.

2. Every local law imposing taxes pursuant to the authority of subdivision one shall also impose upon each person, other than a distributor within the meaning of such local law, who, on the date the taxes imposed pursuant to the authority of such subdivision become effective, owns and possesses for the purposes of sale beer, or other alcoholic beverages described in subdivision one, a floor tax at the rates applicable under subdivision one upon such beer in excess of one hundred gallons and upon such other alcoholic beverages in excess of four hundred liters. Such floor tax shall be due and payable on the twentieth day of the month succeeding the month in which the taxes become effective.

3. All the provisions of this article shall apply to the taxes authorized by subdivision one of this section and the provisions of section four hundred twenty, four hundred twenty-six, four hundred twenty-nine through four hundred thirty-four, four hundred thirty-six and four hundred thirty-seven shall apply to the tax authorized by subdivision two thereof, so far as such article or sections can be made applicable to the taxes authorized by this section with such limitations as set forth in this section and such modifications as may be necessary in order to adapt such language to the local taxes authorized by this section. Provided, however, in every case where the words "this state" appear in subdivision four of section four hundred twenty-four exempting quantities of liquor from tax, and in the definition of "Distributor" or "Noncommercial importer" in section four hundred twenty and in the provisions relating to the registration of distributors in section four hundred twenty-one of this article and in the provisions relating to presumption of taxability in section four hundred twenty-five-a of this article, such words "this state" shall be read as "this city" for purposes of the taxes authorized by this section. Where the word "state" is used in a phrase referring to the sale or use of alcoholic beverages in this state, such word "state" shall be read as "city" for purposes of the taxes authorized by this section, unless the word "city" clearly is not applicable.

4. Any taxes imposed pursuant to the authority of this section shall be administered and collected by the tax commission in the same manner as the taxes imposed under sections four hundred twenty-four and four hundred twenty-five subject to all provisions of this article as may be applicable. The state tax commission is hereby empowered to make such provisions as it deems necessary for the joint administration and collection of the state and local taxes imposed and authorized by this article. Nothing in this article which requires payment of both state and local taxes to the tax commission shall be construed as the payment of either tax more than once.

5. A local law imposing taxes pursuant to the authority of this section or repealing or suspending such taxes must go into effect only on the first day of a calendar month. No such local law shall be effective unless a certified copy of such law is mailed by registered mail to the state tax commission at its office in Albany at least sixty days prior to the date it is to become effective. However, the tax commission, by resolution, may waive and reduce such sixty day minimum notice requirement to a mailing of such certified copy by registered mail within a period of not less than thirty days prior to such effective date if it deems such action to be consistent with its duties under this section.

6. Certified copies of any local law described in this section shall also be filed with the city clerk, the secretary of state and the state comptroller within five days after the date it is enacted.

7. All taxes, penalties and interest imposed by a city under the authority of this section, which are collected by the state tax commission, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for such city imposing the tax. Such deposits shall be kept in trust and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the tax commission. The comptroller shall retain in his hands such amount as the commissioner of taxation and

finance may determine to be necessary for refunds in respect of the taxes imposed under the authority of this section, and for reasonable costs of the state tax commission in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under the provisions of this article. The comptroller, after reserving such refund fund and such costs shall, on or before the twelfth day of each month, pay to the appropriate fiscal officer of such city, the taxes, penalties and interest imposed by such city under the authority of this section, collected by the state tax commission pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the comptroller by the president of the state tax commission or his delegate, who shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to such city in any such distribution is more or less than the amount then due to such city, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the state tax commission or his delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to such city shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the state tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts or circumstances.

ARTICLE 19

AUTHORIZED COMBATIVE SPORTS TAX

Section 451. Definitions.

452. Imposition of tax.

453. Payment of tax.

454. Agents of the commissioner of taxation and finance.

455. Receipts exempted from tax.

§ 451. Definitions. For purposes of this article, the term:

1. "Gross receipts from ticket sales" shall mean the total gross receipts of every person from the sale of tickets to any authorized combative sport held in this state, and without any deduction whatsoever for commissions, brokerage, distribution fees, advertising or any other expenses, charges and recoupments in respect thereto.

2. "Gross receipts from broadcasting rights" shall mean the total gross receipts of every person from the sale, lease or other exploitation of broadcasting, television and motion picture rights of such match or exhibition held in this state, to the extent only, however, that such price shall be attributable to transmissions and presentations received or exhibited in this state, and without any deductions whatsoever for commissions, brokerage, distribution fees, advertising or any other expenses, charges and recoupments in respect thereto.

3. "Person" includes a corporation, association, club, company, partnership, limited liability company, estate, trust, liquidator, fiduciary or other entity or individual liable for the tax imposed by this article or under a duty to perform an act under this article.

4. "Authorized combative sport" shall mean any combative sport authorized pursuant to section one thousand one of the general business law.

§ 452. Imposition of tax. 1. On and after October first, nineteen hundred ninety-nine, a tax is hereby imposed and shall be paid upon the gross receipts of every person holding any professional or amateur boxing, sparring or wrestling match or exhibition in this state. Such tax shall be imposed on such gross receipts, exclusive of any federal taxes, as follows:

(a) three percent of gross receipts from ticket sales, except that in no event shall the tax imposed by this paragraph exceed fifty thousand dollars for any match or exhibition;

(b) three percent of gross receipts from broadcasting rights, except that in no event shall the tax imposed by this paragraph exceed fifty thousand dollars for any match or exhibition.

2. On and after the effective date of this subdivision, a tax is hereby imposed and shall be paid upon the gross receipts of every person holding any authorized combative sport in this state, other than any professional or amateur boxing, sparring or wrestling exhibition or match, exclusive of any federal taxes as follows:

* (a) eight and one-half percent of gross receipts from ticket sales; and

* NB Effective until December 1, 2024

* (a) three percent of gross receipts from ticket sales; and

* NB Effective December 1, 2024

(b) three percent of the sum of (i) gross receipts from broadcasting rights, and (ii) gross receipts from digital streaming over the internet, except that in no event shall such tax imposed pursuant to this paragraph exceed fifty thousand dollars for any match or exhibition.

§ 453. Payment of tax. 1. In the case of gross receipts from broadcasting rights, such tax shall be paid to the commissioner of taxation and finance or to employees or officers of the state athletic commission acting as agents of the commissioner of taxation and finance and shall be accompanied by a return in such form as shall be prescribed by the commissioner of taxation and finance. Payments shall be made on or before the last day of the month in which such gross receipts from broadcasting rights are received by the individual corporation, association or club holding such match or exhibition. Where the taxpayer receives receipts subject to tax during the last five days of a month, the required return and payment of tax shall not be due until the fifth day of the succeeding month.

2. In the case of gross receipts from ticket sales, such tax shall be paid to the commissioner or to employees or officers of the state athletic commission acting as agents of the commissioner within ten business days after the holding of the match or exhibition and shall be accompanied by a return in such form as shall be prescribed by the commissioner.

3. The commissioner of taxation and finance may grant a reasonable extension of time for filing returns and payment of tax whenever reasonable cause exists.

§ 454. Agents of the commissioner of taxation and finance. Employees and officers of the state athletic commission shall act as agents of the commissioner of taxation and finance in collecting the tax due under this article. The state athletic commission shall deposit all funds collected pursuant to this article and shall follow such procedures and keep such records as shall be prescribed by the commissioner of taxation and finance.

§ 455. Receipts exempted from tax. 1. The gross receipts from any sparring, boxing or wrestling match or exhibition conducted under the supervision or the control of the New York state national guard or naval militia where all of the contestants are members of the active militia shall not be subject to the tax imposed by this article.

2. The gross receipts from any such match or exhibition where the contestants are all amateurs, sponsored by or under the supervision of any university, college, school or other institution of learning, recognized by the regents of the state of New York shall not be subject to the tax imposed by this article.

3. The gross receipts from any such matches or exhibitions where the contestants are all amateurs sponsored by or under the supervision of the U.S. Amateur Boxing Federation or its local affiliates or the American Olympic Association shall not be subject to the tax imposed by

this article.

4. For the purpose of this section, an amateur is deemed to mean a person who engages in boxing, sparring or wrestling matches and exhibitions where no cash prizes are awarded to participants, and where the prize competed for shall not in value exceed thirty-five dollars or, in boxing, a maximum amount established by the U.S. Amateur Boxing Federation.

§ 456. Practice and procedure. The provisions of article twenty-seven of this chapter shall apply with respect to the administration of and procedure with respect to the tax imposed under this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article. Criminal penalties provided in section one thousand eight hundred twenty of this chapter shall apply in the same manner and with the same force and effect with respect to this article.

ARTICLE 20

TAX ON CIGARETTES AND TOBACCO PRODUCTS

Section 470. Definitions.

471. Imposition of cigarette tax.

471-a. Use tax on cigarettes.

471-b. Imposition of tobacco products tax.

471-c. Use tax on tobacco products.

471-d. Special provision as to imposition of taxes on certain tobacco products.

471-e. Taxes imposed on qualified reservations.

472. Preparation and sale of stamps; commissions; distributors.

473. Affixation and cancellation of stamps; presumption.

473-a. Returns and payment of tobacco products tax by

distributors.

- 473-b. Cigarettes marked for export outside the United States; importation and affixation of stamps prohibited.
- 474. Records to be kept; examination.
- 475. General powers of the tax commission.
- 476. Refunds; sales of stamps.
- 478. Determination of tax.
- 479. Warrant for the collection of taxes.
- 480. License.
- 480-a. Retail dealer and vending machine registration.
- 480-b. Prohibition against the stamping of certain cigarettes.
- 480-c. Prohibition against the sale of certain tobacco products.
- 481. Penalties and interest.
- 482. Deposit and disposition of revenue.
- 482-a. Joint administration.

§ 470. Definitions. When used in this article the following words shall have the meanings herein indicated: 1. "Cigarette." Any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco. "Cigarette" shall not include a research tobacco product.

2. "Tobacco products." Any cigar, including a little cigar, tobacco, or alternative nicotine product, other than cigarettes, intended for consumption by smoking, chewing, or as snuff. "Tobacco products" shall not include research tobacco products.

2-a. "Roll-your-own tobacco." Any tobacco product that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

2-b. "Little cigar." Any roll for smoking made wholly or in part of

tobacco if such product is wrapped in any substance containing tobacco, other than natural leaf tobacco wrapper, and weighing not more than four pounds per thousand or with a cellulose acetate or other integrated filter.

3. "Person" includes an individual, copartnership, limited liability company, society, association, corporation, joint stock company, and any combination of individuals and also an executor, administrator, receiver, trustee or other fiduciary.

4. "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor.

5. "Retail sale" or "sale at retail" means a sale to a consumer or to any other person for any purpose other than resale.

6. "Wholesale price." The price for which a manufacturer or other person sells tobacco products to a distributor, including the federal excise taxes paid by the manufacturer or other person, before the allowance of any discount, trade allowance, rebate or other reduction.

The invoice received by a distributor with respect to its purchase of a tobacco product shall be presumptive evidence of the wholesale price of such tobacco product.

7. "Dealer." Any wholesale dealer and retail dealer as hereinafter defined.

8. "Wholesale dealer." Any person who (a) sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, or (b) owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person, or (c) sells cigarettes or tobacco products to an Indian nation or tribe or to a reservation cigarette seller on a qualified reservation.

9. "Retail dealer." Any person other than a wholesale dealer engaged in selling cigarettes or tobacco products. For purposes of section four hundred eighty-a of this article and section eleven hundred thirty-four of this chapter, such term shall include for each such person engaged in selling cigarettes or tobacco products all "persons required to collect tax," as defined in subdivision one of section eleven hundred thirty-one of this chapter.

10. "Package." The individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

11. "Agent." Any person licensed by the commissioner of taxation and finance to purchase and affix adhesive or meter stamps on packages of cigarettes under this article.

12. "Distributor." Any person who imports or causes to be imported into this state any tobacco product (in excess of fifty cigars, one pound of tobacco, or fifteen units of alternative nicotine products) for sale, or who manufactures any tobacco product in this state, and any person within or without the state who is authorized by the commissioner of taxation and finance to make returns and pay the tax on tobacco products sold, shipped or delivered by them to any person in the state.

13. "Unstamped or unlawfully stamped packages of cigarettes." A package of cigarettes which bears no tax stamp, or which bears a tax stamp of another state or taxing jurisdiction is considered to be an unstamped package of cigarettes. A package of cigarettes bearing a counterfeit New York state or a counterfeit joint state and New York city tax stamp is an unlawfully stamped package of cigarettes.

14. "Indian nation or tribe." One of the following New York state Indian nations or tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechaugue Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca and Tuscarora Nation.

15. "Qualified Indian." A person duly enrolled on the tribal rolls of one of the Indian nations or tribes. In the case of the Cayuga Indian Nation of New York, such term shall include enrolled members of such nation when such enrolled members purchase cigarettes on any Seneca reservation.

16. "Qualified reservation." (a) Lands held by an Indian nation or tribe that is located within the reservation of that nation or tribe in the state;

(b) Lands within the state over which an Indian nation or tribe exercises governmental power and that are either (i) held by the Indian nation or tribe subject to restrictions by the United States against alienation, or (ii) held in trust by the United States for the benefit of such Indian nation or tribe;

(c) Lands held by the Shinnecock Tribe or the Poospatuck (Unkechaug) Nation within their respective reservations; or

(d) Any land that falls within paragraph (a) or (b) of this subdivision, and which may be sold and replaced with other land in accordance with an Indian nation's or tribe's land claims settlement agreement with the state of New York, shall nevertheless be deemed to be subject to restriction by the United States against alienation.

17. "Reservation cigarette seller." A seller of cigarettes which is an Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells cigarettes within the boundaries of a qualified reservation.

18. "Snuff." Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

19. "Cigar." Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in subdivision one of this section). "Cigar" shall include, except where expressly excluded, any little cigar.

20. "Research tobacco product." A tobacco product or cigarette that is labeled as a research tobacco product, manufactured for use in research

for health, scientific, or similar experimental purposes, is exclusively used for such purposes by an accredited college, university or hospital, or a researcher affiliated with an accredited college, university or hospital, and is not offered for sale or sold to consumers for any purpose.

21. "Affiliated person." Persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person, or by a group of other persons that are affiliated persons with respect to each other.

22. "Alternative nicotine product." Any noncombustible product, other than vapor products, which contains nicotine but not tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act. The term "unit" as it relates to alternative nicotine products means any cannister, pack, box, carton, or container of any kind or, if no other container, any wrapping, in which an alternative nicotine product is offered for sale, sold, or otherwise distributed to consumers.

§ 471. Imposition of cigarette tax. 1. There is hereby imposed and shall be paid a tax on all cigarettes possessed in the state by any person for sale, except that no tax shall be imposed on cigarettes sold under such circumstances that this state is without power to impose such tax, including sales to qualified Indians for their own use and consumption on their nations' or tribes' qualified reservation, or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent

provided in such regulations and policy statements of such an agency applicable to such sales. The tax imposed by this section is imposed on all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians and evidence of such tax shall be by means of an affixed cigarette tax stamp. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system established in section four hundred seventy-one-e of this article which provides a mechanism for the collection of the tax imposed by this section on cigarette sales on qualified reservations to such non-members and non-Indians and for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of qualified members of the Indian nation or tribe. If an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system, the prior approval system shall be the mechanism for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of qualified members of the Indian nation or tribe as provided for in paragraph (b) of subdivision five of this section. Such tax on cigarettes shall be at the rate of five dollars and thirty-five cents for each twenty cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be one dollar and thirty-three and three-quarters cents for each five cigarettes or fraction thereof. Such tax is intended to be imposed upon only one sale of the same package of cigarettes. It shall be presumed that all cigarettes within the state are subject to tax until the contrary is established, and the burden of proof that any cigarettes are not taxable hereunder shall be upon the person in possession thereof.

2. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any agent or dealer who shall pay the tax to the commissioner shall collect the tax from the purchaser or consumer. Except as hereinafter provided, the tax shall be advanced and paid by the agent. The agent shall be liable for the collection and payment of the tax on cigarettes imposed by this article and shall pay the tax to the commissioner by purchasing, under such regulations as he or she shall prescribe, adhesive stamps of such designs and

denominations as he or she shall prescribe. The tax on cigarettes may also be paid by or through the use of metering machines if the commissioner so prescribes. Agents, located within or without the state, shall purchase stamps and affix such stamps in the manner prescribed to packages of cigarettes to be sold within the state, in which case any dealer subsequently receiving such stamped packages of cigarettes will not be required to purchase and affix stamps on such packages of cigarettes. All cigarettes sold by agents and wholesalers to Indian nations or tribes or reservation cigarette sellers located on an Indian reservation must bear a tax stamp.

3. The amount of taxes advanced and paid by the agent as hereinabove provided shall be added to and collected as part of the sales price of the cigarettes.

4. (a) Notwithstanding any provision of law to the contrary, no person, including but not limited to a tobacco product manufacturer, shall sell unstamped packages of cigarettes to any agent, if such person has not been provided with a certification by the agent as required in paragraph (b) of this subdivision.

(b) Any agent who purchases unstamped packages of cigarettes from any person, which are intended for resale in or into the state, shall provide such person and the department with a certification under penalty of perjury that such cigarettes will not be resold by the agent in violation of the terms of this article. Such certification shall be provided to such person and the department prior to the first sale of such cigarettes by such person to the agent following the effective date of this subdivision, and annually thereafter, on such form as shall be prescribed by the commissioner.

5. Prior approval system. (a) For any year that the recognized governing body of an Indian nation or tribe has not elected to participate in the Indian tax exemption coupon system established in section four hundred seventy-one-e of this article, paragraph (b) of this subdivision provides for the prior approval system to be the mechanism as to how Indian nations or tribes or reservation cigarette sellers can purchase adequate quantities of tax-exempt cigarettes for

the personal use and consumption of qualified members of the Indian nation or tribe on their nations' or tribes' qualified reservation.

(b) If an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system, Indian nations or tribes or reservation cigarette sellers may purchase from New York state licensed cigarette stamping agents and wholesalers an adequate quantity of tax-exempt cigarettes based on probable demand on their nations' or tribes' qualified reservation for official nation or tribal or qualified Indian use or consumption from agents and wholesalers who have received prior approval from the department. All such pre-approved tax exempt cigarettes shall nonetheless bear a tax stamp. The department shall grant agents and wholesalers prior approval in a manner and form to be determined by the department and as may be prescribed by regulation. The department shall issue expedited refunds or credits to agents whenever the department grants such prior approvals. Probable demand shall be determined as provided by subdivision two of section four hundred seventy-one-e of this article and as may be prescribed by regulation.

6. Tax agreements with Indian nations or tribes. If an Indian nation or tribe enters into an agreement with the state and the legislature approves such agreement or if an Indian nation or tribe enters into an agreement with the state that is part of a stipulation and order approved by a federal court of competent jurisdiction regarding the sale and distribution of cigarettes on the nation's or tribe's qualified reservation, the terms of such agreement shall take precedence over the provisions of this article and exempt sales to non-members of the tribe or nation and non-Indians by such nation from such taxes to the extent that such taxes are specifically referred to in the agreement, and the sale or distribution, including transportation, of any cigarettes to the nation's or tribe's qualified reservation shall be in accordance with the provisions of such agreement.

7. The taxes imposed under this section shall not apply to adult-use cannabis products subject to tax under article twenty-C of this chapter.

§ 471-a. Use tax on cigarettes. There is hereby imposed and shall be

paid a tax on all cigarettes used in the state by any person, except that no tax shall be imposed (1) if the tax provided in section four hundred seventy-one of this article is paid, (2) on the use of cigarettes which are exempt from the tax imposed by said section, or (3) on the use of four hundred or less cigarettes, brought into the state on, or in the possession of, any person. Such tax on cigarettes shall be at the rate of five dollars and thirty-five cents for each twenty cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be one dollar and thirty-three and three-quarters cents for each five cigarettes or fraction thereof. Within twenty-four hours after liability for the tax accrues, each such person shall file with the commissioner a return in such form as the commissioner may prescribe together with a remittance of the tax shown to be due thereon. For purposes of this article, the word "use" means the exercise of any right or power actual or constructive and shall include but is not limited to the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale. All other provisions of this article if not inconsistent shall apply to the administration and enforcement of the tax imposed by this section in the same manner as if the language of said provisions had been incorporated in full into this section.

§ 471-b. Imposition of tobacco products tax. 1. There is hereby imposed and shall be paid a tax on all tobacco products possessed in this state by any person for sale, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and policy statements of such an agency applicable to such sales.

(a) Such tax on tobacco products other than snuff and little cigars shall be at the rate of seventy-five percent of the wholesale price, and is intended to be imposed only once upon the sale of any tobacco

products other than snuff and little cigars.

(b) Such tax on snuff shall be at the rate of two dollars per ounce and a proportionate rate on any fractional parts of an ounce, provided that cans or packages of snuff with a net weight of less than one ounce shall be taxed at the equivalent rate of cans or packages weighing one ounce. Such tax shall be computed based on the net weight as listed by the manufacturer, and is intended to be imposed only once upon the sale of any snuff.

(c) The tax on each little cigar shall be at the rate of twenty-six and three-quarters cents and is intended to be imposed only once upon the sale of any little cigar.

It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established, and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof.

2. The distributor shall be liable for the payment of the tax on tobacco products which he imports or causes to be imported into the state, or which he manufactures in the state, and every distributor authorized by the commissioner of taxation and finance to make returns and pay the tax on tobacco products sold, shipped or delivered by him to any person in the state shall be liable for the payment of the tax on all tobacco products so sold, shipped or delivered.

3. Every dealer shall be liable for the tax on all tobacco products in his possession at any time, upon which tax has not been paid or assumed by a distributor appointed by the commissioner of taxation and finance, and the failure of any dealer to produce and exhibit to the commissioner of taxation and finance or his authorized representative upon demand, an invoice by a distributor or licensed wholesale dealer for any tobacco products in his possession shall be presumptive evidence that the tax thereon has not been paid, and that such dealer is liable for the tax thereon unless evidence of such invoice, payment or assumption shall later be produced.

§ 471-c. Use tax on tobacco products. (a) There is hereby imposed and shall be paid a tax on all tobacco products used in the state by any person, except that no such tax shall be imposed (1) if the tax provided in section four hundred seventy-one-b of this article is paid, or (2) on the use of tobacco products which are exempt from the tax imposed by said section, or (3) on the use of two hundred fifty cigars or less, or five pounds or less of tobacco other than roll-your-own tobacco, or thirty-six ounces or less of roll-your-own tobacco, or seventy-five units or less of alternative nicotine products, brought into the state on, or in the possession of, any person.

(i) Such tax on tobacco products other than snuff and little cigars shall be at the rate of seventy-five percent of the wholesale price.

(ii) Such tax on snuff shall be at the rate of two dollars per ounce and a proportionate rate on any fractional parts of an ounce, provided that cans or packages of snuff with a net weight of less than one ounce shall be taxed at the equivalent rate of cans or packages weighing one ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(iii) The tax on each little cigar shall be at the rate of twenty-six and three-quarters cents and is intended to be imposed only once upon the sale of any little cigar.

(b) Within twenty-four hours after liability for the tax accrues, each such person shall file with the commissioner a return in such form as the commissioner may prescribe together with a remittance of the tax shown to be due thereon. For purposes of this article, the word "use" means the exercise of any right or power actual or constructive and shall include but is not limited to the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale. All the other provisions of this article, if not inconsistent, shall apply to the administration and enforcement of the tax imposed by this section in the same manner as if the language of said provisions had been incorporated in full into this section.

§ 471-d. Special provision as to imposition of taxes on certain tobacco products. If a person shall receive any tobacco products, upon which tobacco products this state was without power to impose the taxes

under this article, and such person shall thereafter possess such tobacco products for sale or use any such tobacco products in such manner and under such circumstances as may subject the same to the taxing power of this state with respect to such possession for sale or use, such person shall be liable for the tax imposed by section four hundred seventy-one-b or four hundred seventy-one-c of this article, as the case may be with respect to such sale or use, and shall make the same reports and returns, pay the same taxes and be subject to all other provisions of this article relating to distributors, except that such a person shall not be subject to the provisions of sections four hundred seventy-two and four hundred eighty of this article if such person does not offer tobacco products for sale.

§ 471-e. Taxes imposed on qualified reservations. 1. Indian tax exemption coupon system. (a) Notwithstanding any provision of this article to the contrary qualified Indians may purchase cigarettes for such qualified Indians' own use or consumption exempt from cigarette tax on their nations' or tribes' qualified reservations. However, such qualified Indians purchasing cigarettes off their reservations or on another nation's or tribe's reservation, and non-Indians making cigarette purchases on an Indian reservation shall not be exempt from paying the cigarette tax when purchasing cigarettes within this state. Accordingly, all cigarettes sold on an Indian reservation to non-members of the nation or tribe or to non-Indians shall be taxed, and evidence of such tax will be by means of an affixed cigarette tax stamp.

(b) In order to ensure an adequate quantity of cigarettes on Indian reservations which may be purchased by qualified Indians exempt from the cigarette tax, the recognized governing body of an Indian nation or tribe may annually elect to participate in the Indian tax exemption coupon system for that year. If the recognized governing body of an Indian nation or tribe elects within the time specified by the department to participate in the Indian tax exemption coupon system for that year, the department shall provide the Indian nation or tribe with Indian tax exemption coupons as set forth in this section. If the recognized governing body of an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system for that year or

does not make this election for that year within the time specified by the department, no Indian tax exemption coupons will be provided to that Indian nation or tribe for that year. Instead, for that year, the prior approval system set forth in paragraph (b) of subdivision five of section four hundred seventy-one of this article shall be used. When the recognized governing body of an Indian nation or tribe elects to use the Indian tax exemption coupon system for a year, an Indian nation or tribe and a reservation cigarette seller shall be able to present such Indian tax exemption coupons to a wholesale dealer licensed pursuant to this article in order to purchase stamped cigarettes exempt from the imposition of the cigarette tax. Qualified Indians may purchase cigarettes from a reservation cigarette seller exempt from the cigarette tax even though such cigarettes will have an affixed cigarette tax stamp.

2. Indian tax exemption coupons. (a) If the recognized governing body of an Indian nation or tribe timely elects to participate in the Indian tax exemption coupon system for that year, Indian tax exemption coupons shall be provided to the recognized governing body of such Indian nation or tribe to ensure that such Indian nation or tribe can obtain cigarettes upon which the tax will not be collected that are for the use or consumption by the nation or tribe or by the members of such nation or tribe. The Indian tax exemption coupons shall be provided to such Indian nations or tribes on a quarterly basis for each of the four quarters beginning with the first day of December, March, June, and September of that year. It is intended that the Indian nations or tribes will retain the amount of Indian tax exemption coupons they will need each quarter to purchase cigarettes for official nation or tribal use, and will distribute the remaining Indian tax exemption coupons to reservation cigarette sellers on such nations' or tribes' qualified reservations. Only Indian nations or tribes or reservation cigarette sellers on their qualified reservations may redeem such Indian tax exemption coupons pursuant to this section.

(b) The amount of Indian tax exemption coupons to be given to the recognized governing body of each Indian nation or tribe shall be based upon the probable demand of the qualified Indians on such nation's or tribe's qualified reservation plus the amount needed for official nation

or tribal use.

(i) Probable demand shall be determined by reference to, among other data, the United States average cigarette consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected Indian nation or tribe.

(ii) In making a determination of probable demand, the department shall take into consideration any evidence submitted by such recognized governing body relating to such probable demand (e.g., a verifiable record of previous sales to qualified Indians or other statistical evidence) and/or relating to the amount needed for such nation's or tribe's official use.

(c) Each Indian tax exemption coupon shall consist of a retention portion for a wholesale dealer's recordkeeping purposes and a redemption portion for a wholesale dealer's submission to the department when claiming a refund as set forth in subdivision four of this section, and shall contain the following information:

- (i) the identity of the Indian nation or tribe to which it is issued;
- (ii) the identity and the quantity of the product for which it is issued;
- (iii) the date of issuance and the date of expiration; and
- (iv) any other information as the commissioner may deem appropriate.

3. Tax exempt purchaser. (a) An Indian nation or tribe may purchase cigarettes for its own official use or consumption from a wholesale dealer licensed pursuant to this article without payment of the cigarette tax to the extent that the Indian nation or tribe provides such wholesale dealer with Indian tax exemption coupons entitling the Indian nation or tribe to purchase such quantities of cigarettes as allowed for on each Indian tax exemption coupon without paying the cigarette tax.

(b) A qualified Indian may purchase cigarettes for his or her own use or consumption without payment of the cigarette tax, provided that the qualified Indian makes such purchase on a qualified reservation.

(c) A reservation cigarette seller may purchase cigarettes for resale without payment of the cigarette tax from a wholesale dealer licensed pursuant to this article:

(i) provided that such reservation cigarette seller brings such cigarettes or causes them to be delivered onto a qualified reservation for resale on such reservation;

(ii) to the extent that such reservation cigarette seller provides such wholesale dealer with Indian tax exemption coupons entitling the reservation cigarette seller to purchase such quantities of cigarettes as allowed for on each Indian tax exemption coupon without paying the cigarette tax; and

(iii) provided that such cigarettes are affixed with a cigarette tax stamp.

(d) Wholesale dealers shall sell only tax-stamped cigarettes to Indian nations and tribes, reservation cigarette sellers and all other purchasers, but shall not collect the cigarette tax from any purchaser to the extent the purchaser gives such wholesale dealer Indian tax exemption coupons entitling the purchaser to purchase such quantities of cigarettes as allowed for on each such Indian tax exemption coupon without paying the cigarette tax.

4. Refunds. A wholesale dealer licensed pursuant to this article who has one or more Indian tax exemption coupons may file a claim for refund as provided for in section four hundred seventy-six of this article with respect to any cigarette tax previously paid on cigarettes it sold without collecting the tax because it accepted an Indian tax exemption coupon from its purchaser pursuant to this section.

5. Tax agreements with Indian nations or tribes. If an Indian nation or tribe enters into an agreement with the state and the legislature approves such agreement regarding the sale and distribution of cigarettes on the nation's or tribe's qualified reservation, the terms of such agreement shall take precedence over the provisions of this article and exempt such nation from such taxes to the extent that such taxes are specifically referred to in the agreement, and the sale or distribution, including transportation, of any cigarettes to the nation's or tribe's qualified reservation shall be in accordance with the provisions of such agreement.

6. The failure of the department to establish, issue and provide

Indian tax exemption coupons, pursuant to subdivisions one and two of this section, or to promulgate any rules, regulations or directives necessary to implement the provisions of this section, shall not relieve wholesale dealers of the obligation to sell only tax-stamped cigarettes to Indian nations and tribes, and to reservation cigarette sellers.

§ 472. Preparation and sale of stamps; commissions; distributors. 1.

The commissioner shall prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax on cigarettes imposed by this article, and may from time to time and as often as he deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design, in the manner and with the effect provided in section two hundred seventy-four of this chapter. The commissioner shall make provisions for the sale of such stamps at such places and at such times as he may deem necessary and may license agents for such purpose. The commissioner may license dealers in cigarettes, who maintain separate warehousing facilities for the purpose of receiving and distributing cigarettes and conducting their business, who have received commitments from at least two cigarette manufacturers whose aggregate market share is at least forty percent of the New York state cigarette market, and importers, exporters and manufacturers of cigarettes, and other persons within or without the state as agents to buy or affix stamps to be used in paying the tax herein imposed, but an agent shall at all times have the right to appoint the person in his employ who is to affix the stamps to any cigarettes under the agent's control. The fee for filing such application for an agent's license shall be one thousand five hundred dollars, unless such fee has been paid during the preceding twelve months, in which case, the fee for a new license shall be one thousand dollars. All of the provisions of section four hundred eighty relating to wholesale dealers' licenses, including the procedure for suspension, revocation, refusal to license and for hearings, except for paragraphs (c) and (g) of subdivision one of such section, shall be applicable to agents' licenses applied for or granted pursuant to this section, as if such provisions had been set forth in full in this subdivision and had expressly referred to the applicant for, or the holder of, an agent's

license. Whenever the commissioner shall sell and deliver to any such agent any such stamps, such agent shall be entitled to receive as compensation for his services and expenses as such agent in selling or affixing such stamps, and to retain out of the moneys to be paid by him for such stamps, a commission on the par value thereof. The commissioner is hereby authorized to prescribe a schedule of commissions, not exceeding five per centum, allowable to such agent for buying and affixing such stamps. Such schedule shall be uniform with respect to the different types of stamps used, and may be on a graduated scale with respect to the number of stamps purchased. The commissioner may, in his discretion, permit an agent to pay for such stamps within thirty days after the date of purchase and may require any such agent to file with the department of taxation and finance a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in the state or other security acceptable to the commissioner, in such amount as the commissioner may fix, to secure the payment of any sums due from such agent pursuant to this article. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner and may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such agent pursuant to this article, but no such sale shall be had until after such agent shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article shall be returned to such agent.

2. A manufacturer or agent who intends to sell within the state packages of cigarettes containing more than twenty cigarettes must notify the tax commission, in writing, of such intention one hundred twenty days prior to the time such packages will be sold within the state, except that such tax commission shall waive such requirement if it has already prescribed, prepared and furnished, or is in a position to prescribe, prepare and furnish in a timely manner, stamps of such denomination and quantities as may be necessary for the payment of the tax imposed by this article on cigarettes in such package; provided, however, that a notice provided pursuant to this subdivision within fifteen days of the effective date of this subdivision shall be deemed

to have been provided on the effective date of this subdivision.

3. The commissioner of taxation and finance may appoint dealers in tobacco products, manufacturers of tobacco products and other persons within or without the state as distributors and may authorize them to make returns and to pay the tax on tobacco products sold, shipped or delivered by them to any person in the state. The commissioner may, in his discretion, require the deposit of a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state, or other security acceptable to the commissioner in an amount and form satisfactory to him as a condition of appointing any such person as a distributor. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner of taxation and finance and may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such distributor pursuant to this article, but no such sale shall be had until after such distributor shall have had an opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article shall be returned to such distributor.

§ 473. Affixation and cancellation of stamps; presumption. Each agent shall affix within the time hereinafter prescribed, to each package of cigarettes, stamps evidencing the payment of the tax imposed by this article and shall cancel such stamps before such cigarettes are offered for sale or before they are otherwise disposed of, unless stamps have been affixed to such packages of cigarettes and cancelled before such agent received them. Each dealer, other than an agent, shall immediately upon the receipt of any cigarettes at his place of business mark in ink on each unopened box, carton or other container of such cigarettes the word "received" and the year, month, day and hour of such receipt, and shall affix his signature thereto, or in any other manner prescribed.

Each retail dealer shall open such box, carton or other container within twenty-four hours after such receipt and prior to exposing for

sale or selling such cigarettes and examine the packages contained therein for the purpose of ascertaining whether or not the said packages have affixed thereto the proper tax stamp; if unstamped or improperly stamped packages of cigarettes are discovered, the retail dealer shall immediately notify the dealer from whom said cigarettes were purchased. Upon such notification, the dealer from whom said cigarettes were purchased will replace such unstamped or improperly stamped packages of cigarettes with those upon which stamps have been properly affixed.

Whenever any cigarettes are found in the place of business of such dealer, other than an agent, without the stamps affixed and cancelled, or not marked as having been received within the preceding twenty-four hours, the presumption shall be that such cigarettes are kept therein in violation of the provisions of this article. Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser.

§ 473-a. Returns and payment of tobacco products tax by distributors.

1. Every distributor shall, on or before the twentieth day of each month, file with the commissioner of taxation and finance a return on forms to be prescribed and furnished by the commissioner, showing the quantity and wholesale price of all tobacco products imported or caused to be imported into the state by him or manufactured in the state by him, during the preceding calendar month. Every distributor authorized by the commissioner to make returns and pay the tax on tobacco products sold, shipped or delivered by him to any person in the state shall file a return showing the quantity and wholesale price of all tobacco products so sold, shipped or delivered during the preceding calendar month. Provided, however, the commissioner may, if he deems it necessary in order to insure the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as he may deem necessary, and, by regulation, may permit the filing of returns on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a distributor for such time and upon such terms as he may deem proper if satisfied that no tax imposed by this article is or will

be payable by him during the time for which returns are waived. Such returns shall contain such further information as the commissioner may require.

2. Every distributor shall pay to the commissioner with the filing of such return the tax on tobacco products for such month imposed under this article.

§ 473-b. Cigarettes marked for export outside the United States; importation and affixation of stamps prohibited. 1. A person may not import into this state any cigarettes that have been marked for export outside the United States with a label or notice in compliance with 27 CFR § 290.185 or that violates a federal requirement for the placement of labels, warnings, or any other information, including health hazards, on the individual package.

2. A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers or tubes unless that individual complies with all federal tax laws, federal trademark and copyright laws, and all federal laws regarding the placement of labels, warnings or any other information upon a package of cigarettes, cigarette papers, wrappers, or tubes.

3. A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with 27 CFR § 290.185.

§ 474. Records to be kept; examination. 1. Every person who shall possess or transport any unstamped cigarettes upon the public highways, roads or streets of the state, shall be required to have in his actual possession invoices or delivery tickets for such cigarettes. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the cigarettes transported, and the name and

address of the person who has or shall assume the payment of the tax. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in this state and subject to the provisions of this article.

2. Every person who shall possess or transport more than two hundred fifty cigars, or more than five pounds of tobacco other than roll-your-own tobacco, or more than thirty-six ounces of roll-your-own tobacco, or more than seventy-five units of alternative nicotine products, upon the public highways, roads or streets of the state, shall be required to have in their actual possession invoices or delivery tickets for such tobacco products. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the tobacco products transported, and the name and address of the person who has or shall assume the payment of the tax and the wholesale price or the tax paid or payable. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in tobacco products in this state and subject to the requirements of this article.

3. Every dealer or distributor or employee thereof, or other person acting on behalf of a dealer or distributor, who shall possess or transport more than fifty cigars, more than one pound of tobacco, or more than fifteen units of alternative nicotine products, upon the public highways, roads or streets of the state, shall be required to have in their actual possession invoices or delivery tickets for such tobacco products. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the tobacco products transported, and the name and address of the person who has or shall assume the payment of the tax and the wholesale price or the tax paid or payable. The absence of such invoices or delivery tickets shall be prima facie evidence that the tax imposed by this article on tobacco products has not been paid and is due and owing.

4. At the time of delivering cigarettes to any person each agent or

wholesale dealer, and at the time of delivering tobacco products to any person each distributor or wholesale dealer of tobacco products, shall make a true duplicate invoice showing the date of delivery, the number of packages and number of cigarettes contained therein, in each shipment of cigarettes delivered, and the items and quantity and wholesale price of each item in each shipment of tobacco products delivered, and the name of the purchaser to whom delivery is made, and shall retain the same for a period of three years subject to the use and inspection of the commissioner. Each dealer shall procure and retain invoices showing the number of packages and number of cigarettes contained therein, in each shipment of cigarettes received by him or her, and the items and quantity and wholesale price of each item in each shipment of tobacco products received by him or her, the date thereof, and the name of the shipper, and shall retain the same for a period of three years subject to the use and inspection of the commissioner. The commissioner by regulation may provide that whenever cigarettes or tobacco products are shipped into the state, the railroad company, express company, trucking company or other public carrier transporting any shipment thereof shall file with the commissioner a copy of the freight bill within ten days after the delivery in the state of each shipment. All dealers shall maintain and keep for a period of three years such other records of cigarettes or tobacco products received, sold or delivered within the state as may be required by the commissioner. The commissioner is hereby authorized to examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes or tobacco products are placed, stored, sold or offered for sale, and the equipment of any such person pertaining to the stamping of cigarettes or the sale and delivery of cigarettes or tobacco products taxable under this article, as well as the stock of cigarettes or tobacco products in any such premises or vehicle. To verify the accuracy of the tax imposed and assessed by this article, each such person is hereby directed and required to give to the commissioner or his or her duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

5. Every accredited college, university or hospital that receives research tobacco products as defined in subdivision twenty of section

four hundred seventy of this article shall, in good faith, file an annual information return on or before the last day of January reporting all research tobacco products received by such college, university or hospital or its affiliated researcher within the preceding calendar year. Such return shall be in the form and shall include such information as the commissioner prescribes by regulation. Any person required to file an information return by this subdivision who willfully fails to timely file such return or willfully fails to provide any material information required to be reported on such return may be subject to a penalty of up to one thousand dollars.

§ 475. General powers of the tax commission. The powers conferred upon the tax commission by sections one hundred seventy-one and one hundred seventy-one-b of this chapter shall, so far as applicable, be exercisable with respect to the provisions of this article. Such commission may require returns to be filed with it at such times and containing such information as it may prescribe and in such event the fact that a person's name is signed to the return shall be prima facie evidence for all purposes that the return was actually signed by such person. Notwithstanding any other provision of this article, the tax commission may enter into an agreement with any city of this state which is authorized to impose a tax similar to that imposed by this article to provide for the joint administration, in whole or in part, of such taxes.

§ 476. Refunds; sales of stamps. Whenever any cigarettes upon which stamps have been placed or tobacco products upon which the tax has been paid have been sold and shipped into another state for sale or use there or have become unfit for use and consumption or unsalable, or have been destroyed, or whenever the commissioner of taxation and finance shall have determined that any tax imposed by this article shall have been paid in error, the agent, dealer or tobacco products distributor, as the case may be, shall be entitled to a refund of the actual amount of tax so paid, provided application therefor is filed with the commissioner of taxation and finance within two years after the stamps were affixed to

such cigarettes or the tax was paid upon such tobacco products, except if an agreement under the provisions of section four hundred seventy-eight (extending the period for determination of tax imposed by this article) is made within the two-year period for the filing of an application for refund provided for in this section, the period for filing an application for refund shall not expire prior to six months after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof. If the commissioner of taxation and finance is satisfied that any dealer is entitled to a refund he shall issue to such dealer stamps of sufficient value to cover the refund of the tax on cigarettes or may, subject to audit by the comptroller, make a refund of the tax on cigarettes or on tobacco products. No person shall sell or offer for sale any stamp or stamps issued under this article except by written permission of the commissioner of taxation and finance. The commissioner of taxation and finance may redeem unused stamps lawfully in possession of any person. The commissioner of taxation and finance may prescribe necessary rules and regulations concerning refunds, sales of stamps, and redemptions under the provisions of this article.

§ 478. Determination of tax. If any person files any return under this article, but such return is incorrect or insufficient, the commissioner of taxation and finance shall determine the amount of tax due at any time within three years after the return was filed (whether or not such return was filed on or after the due date), and give written notice of such determination to such person, except that if such person fails to file a return or files a willfully false or fraudulent return with intent to evade the tax, such determination may be made at any time. Notwithstanding any of the foregoing provisions of this section, where, before the expiration of the time prescribed in this section for the determination of tax, both the commissioner of taxation and finance and the taxpayer have consented in writing to its determination after such time, the tax may be determined at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Any determination made pursuant to this

section shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within ninety days after the giving of notice of such determination, petition the division of tax appeals for a hearing. After such hearing, the division of tax appeals shall give notice of the determination of the administrative law judge to the person liable for the tax and to the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter, but the proceeding may not be commenced unless the amount of tax stated or referred to in the decision, with penalties and interest thereon, if any, shall have been first deposited with the commissioner of taxation and finance, and an undertaking filed with him, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if the proceeding be dismissed or the decision confirmed, the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding, or at the option of the petitioner such undertaking may be in a sum sufficient to cover the tax, penalties, interest, costs and charges aforesaid, in which event the petitioner shall not be required to pay such tax, penalties and interest as a condition precedent to the commencement of the proceeding.

The remedy provided by this section for review of a decision of the tax appeals tribunal shall be the exclusive remedy available to any taxpayer to judicially determine the liability of such taxpayer for taxes under this article.

§ 479. Warrant for the collection of taxes. In addition to all other remedies for the collection of any taxes due under the provisions of this article, the tax commission may issue a warrant directed to the sheriff of any county commanding said sheriff to levy upon and sell the real and personal property of a specified delinquent dealer or other person found within his jurisdiction, for the payment of the amount of such delinquency with the added penalties and interest and the cost of executing the warrant, and to return such warrant to the tax commission

and to pay it the money collected by virtue thereof within sixty days after receipt of such warrant. The sheriff shall, within five days after receipt of the warrant, file with the clerk of his county a copy thereof and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. Such lien shall not apply to personal property unless such warrant is also filed in the department of state. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the power conferred by law upon sheriffs, but he shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a warrant, the tax commission shall have the same remedies to enforce the amount due thereunder as if the state had recovered judgment therefor.

§ 480. License. 1. General. (a) On and after July first, nineteen hundred thirty-nine no person shall be a wholesale dealer unless he has been granted and publicly displays in his place of business a license from the department. Applications for licenses shall be made on forms prescribed by the commissioner.

(b) Applications shall be accompanied by proof of the applicant's financial responsibility, including, but not limited to, satisfactory proof of a minimum net worth of twenty-five thousand dollars if the applicant is an individual, or net worth in the capitalization of the business if the applicant is not an individual equal to a minimum of twenty-five thousand dollars.

(c) Each applicant shall file with the department a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in the state, in the face amount of ten thousand dollars, to secure payment of any sums due for any violation of article twenty or article twenty-A of this chapter, or the regulations of the commissioner thereunder.

(d) Each applicant shall file satisfactory proof that it will maintain a secure separate warehousing facility for the purpose of receiving and distributing cigarettes or tobacco products and conducting its wholesale business. Such proof shall consist of a copy of a deed, or a copy of an executed lease for a minimum period of two years, to a separate, secure warehouse. If the applicant carries on another business in conjunction with the warehouse facility, the other business shall also be identified.

(e) Each applicant shall file satisfactory proof that it will provide disability and workers' compensation insurance for its employees.

(f) Each applicant shall submit proof of United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the applicant is not an individual, such proof shall be submitted with respect to each controlling person of the applicant.

(g) The fee for the filing of an application for a license shall be fifteen hundred dollars, unless such fee has been paid during the preceding twelve months, in which case, the fee for a new license shall be one thousand dollars. Each application shall be accompanied by a certified check for the required application fee.

(h) Except as provided in subdivision four of this section, a license shall continue in effect until revoked or suspended for cause or surrendered.

(i) A license shall not be assignable but an applicant who is purchasing the business of a licensee shall file a copy of the contract of sale and any related documents with its application.

(j) The commissioner may for cause refuse to issue, or may suspend or revoke a wholesaler's license, or may forbid a retail dealer to continue selling cigarettes or tobacco products or may forbid a person required to be appointed as a distributor of tobacco products who has not been so appointed from selling cigarettes or tobacco products, after an opportunity for hearing has been afforded. A violation of any provision

of this article or of any regulation issued under it shall be cause to forbid a retail dealer to continue selling cigarettes or tobacco products.

(k) No agent shall sell cigarettes and no distributor shall sell tobacco products to an unlicensed wholesale dealer, or to a wholesale dealer whose license has been suspended or revoked, or to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no wholesale dealer shall sell cigarettes or tobacco products to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no retail dealer shall sell cigarettes or tobacco products unless such dealer is registered under section four hundred eighty-a of this article.

(l) Paragraphs (b), (c) and (g) of this subdivision shall not apply to the filing of an application for a license as a wholesale dealer that is based solely upon the ownership, operation or maintenance of one or more cigarette or tobacco products vending machines in, at or upon premises owned or occupied by another person, or that is based solely upon the sale of tobacco products for resale, or that is based upon both the ownership, operation or maintenance of one or more cigarette or tobacco products vending machines in, at or upon premises owned or occupied by another person and the sale of tobacco products for resale.

2. Refusal to license. The commissioner of taxation and finance may refuse to license an applicant where such applicant files an application under this section and in considering such application the commissioner ascertains that:

(a) Any tax imposed under this chapter or under any related statute as defined in section eighteen hundred of this chapter has been finally determined to be due from such applicant or controlling person and such tax has not been paid in full,

(b) Such applicant or any controlling person has been convicted of a crime provided for in this chapter within the preceding five years,

(c) Such applicant or any controlling person was the controlling person in another wholesale dealer at the time that:

(i) Any tax imposed under this chapter or any related statute as

defined in section eighteen hundred of this chapter was finally determined to be due from such other wholesale dealer and such tax has not been paid in full,

(ii) Such other wholesale dealer was convicted of a crime provided for in this chapter within the preceding five years, or

(iii) The license of such other wholesale dealer was cancelled or suspended pursuant to this section within the preceding five years,

(d) The license of such applicant has been cancelled or suspended pursuant to this section within the preceding five years,

(e) Any controlling person of such applicant has committed any of the acts specified in subdivision three of this section within the preceding five years, or

(f) Such applicant or any controlling person has been finally determined to have violated any of the provisions of this article or article twenty-A of this chapter, or any rule or regulation adopted pursuant to this article or article twenty-A of this chapter.

3. Cancellation or suspension of license.

(a) Acts of licensee. The license of any wholesale dealer may be cancelled or suspended by the tax commission upon:

(i) Its failure to file or maintain in full force and effect a bond or other security when required or when the amount thereof is increased,

(ii) Its failure to comply with any of the provisions of this article or article twenty-A of this chapter or any rule or regulation adopted pursuant to this article or article twenty-A of this chapter by the department or the commissioner, provided, however, that any violation of section four hundred seventy-three-b of this article shall result in license cancellation,

(iii) Its knowingly aiding and abetting another person in violating any of the provisions of this article or article twenty-A of this chapter or any rule or regulation adopted pursuant to this article or article twenty-A of this chapter by the department or the commissioner, provided, however, that any violation of section four hundred seventy-three-b of this article shall result in license cancellation.

(b) Acts of licensee or controlling person. A license may be cancelled or suspended if the tax commission determines that a licensee or any controlling person:

(i) Commits fraud or deceit in his or its operations as a wholesale dealer or has committed fraud or deceit in procuring his or its license,
(ii) Has been convicted in a court of competent jurisdiction, either within or without the state, of a felony, bearing on the licensee's duties and obligations under this chapter,
(iii) Has impersonated any person represented to be a wholesale dealer under this article but not in fact licensed under this section, or
(iv) Has knowingly aided and abetted the sale of cigarettes or tobacco products by a person which such licensee or controlling person knows (A) has not been licensed by the commissioner of taxation and finance and (B) is a wholesale dealer pursuant to the terms of subdivision eight of section four hundred seventy of this chapter.

4. If the commissioner of taxation and finance considers it necessary for the proper administration of the cigarette tax or tobacco products tax imposed by this article or the cigarette marketing standards contained in article twenty-A of this chapter he may require every person under this article who holds a license to file a new application for a license in such form and at such time as the commissioner may prescribe and to surrender such license. The commissioner may require such filing and such surrender not more often than once every three years. Upon the filing of such application with the proper fee and the surrender of such license, the commissioner shall issue, within such time as he may prescribe, a new license to each applicant.

5. Hearing procedure. (a) General. A notice of proposed cancellation or suspension of a license or refusal to issue a license shall be given to the wholesale dealer licensed pursuant to this article or to an applicant applying for such license in the manner prescribed for a notice of deficiency of tax and all the provisions applicable to a notice of deficiency under article twenty-seven of this chapter, including, but not limited to, those provisions authorizing the tax commission to abate on its own motion, shall apply to a notice issued pursuant to this subdivision, insofar as such provisions can be made applicable to a notice authorized by this subdivision, with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this subdivision. Such notice of

proposed cancellation or suspension or of proposed refusal to license must be given to such person within five years from the date of the act or omission referred to in subdivision two or three of this section, except that in the case of acts involving falsity or fraud, such notice may be issued at any time. All of such notices shall contain a statement advising the person to whom it is issued that the cancellation, suspension or refusal to license may be challenged through a hearing process and that the petition for such challenge must be filed with the tax commission within ninety days after the giving of such notice. Where a license is cancelled or suspended prior to a hearing, the cancellation or suspension may be challenged through the hearing process provided the petition for such challenge is filed within ninety days after the giving of notice of such cancellation or suspension.

(b) Refusal to license. In the case of a person applying to be licensed as a wholesale dealer, a notice of proposed refusal to license shall be issued promptly after application for license is received by the tax commission. Upon timely application therefor, a hearing shall be scheduled, and within three months from such application for hearing (determined with regard to any postponements of any scheduled hearing or conference or other delay made at the request of the applicant) the tax commission shall issue a notice of refusal to license or shall license the applicant. If the tax commission fails to issue a notice of refusal to license within such three month period (or such period as extended pursuant to this paragraph), the tax commission shall license the applicant immediately upon the conclusion of such period so long as the applicant has filed a bond or other security as required by the tax commission.

6. For purposes of this section, the term "controlling person" means any person who is:

(a) An officer, director or partner or, in the case of a limited liability company, a member or a person having with respect to such limited liability company authority analogous to that of an officer or director with respect to a corporation of an applicant for a wholesale dealer's license or of a licensee under this article, or

(b) A shareholder, directly or indirectly owning more than ten percent of the number of shares of stock of such applicant or licensee (where

such applicant or licensee is a corporation) entitling the holder thereof to vote for the election of directors or trustees. For purposes of this paragraph, where reference is made to ownership, directly or indirectly, of more than ten percent of the shares of stock of the applicant or another person entitling the holder thereof to vote for the election of directors or trustees, in the case of an applicant or another person which at the relevant time has four or fewer shareholders holding shares entitling the holders thereof to vote for the election of directors or trustees, twenty-five percent or more shall be substituted as the applicable percentage in such references to ownership, directly or indirectly, of voting stock.

§ 480-a. Retail dealer and vending machine registration. 1. (a) On and after January first, nineteen hundred ninety-one, every retail dealer shall publicly display a certificate of registration from the department in each place of business in this state through which it sells cigarettes or tobacco products at retail. A retail dealer who has no regular place of business shall publicly display such certificate on each of its carts, stands, trucks or other merchandising devices through which it sells cigarettes or tobacco products in this state.

(b) Every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state, regardless of whether located on the premises of the vending machine owner or, if the owner is not the operator, then the premises of the operator or the premises of any other person, must register each such vending machine with the department. On and after January first, nineteen hundred ninety-one, a vending machine registration certificate, in such form as may be prescribed by the commissioner of taxation and finance, shall be affixed to each vending machine through which cigarettes or tobacco products are sold in this state.

(c) Registrations of retail dealers and vending machines shall be valid for a calendar year period upon payment of the fee prescribed in subdivision two of this section and must be renewed each year upon payment of such fee. A registration shall not be assignable or transferable. In the case of retail dealers a registration certificate

shall be surrendered to the department immediately upon the retail dealer's ceasing to do business as specified in the registration certificate, or in the event that such business never commenced.

(d) (i) The commissioner shall not register retail dealers or such registration may be cancelled or suspended by the commissioner upon notification that the applicant or retail dealer has been convicted in a criminal proceeding of a violation of subdivision five of section 260.20 of the penal law or as directed by an enforcement officer pursuant to article thirteen-F of the public health law. The clerk of the court shall promptly report all criminal convictions under subdivision five of section 260.20 of the penal law to the commissioner, together with a direction to the commissioner to cancel such registration or to suspend it for a specified period of time. Anything to the contrary in any law notwithstanding, retail dealers shall have no right to a hearing under this chapter and shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner with respect to any action taken by the commissioner under this paragraph, provided nothing herein shall be construed to deny retail dealers a hearing under article thirteen-F of the public health law or to prohibit retail dealers from commencing a court action or proceeding against an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law.

(ii) Anything to the contrary in any law notwithstanding, the commissioner shall provide upon request to an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law such registration information as is relevant and necessary for the implementation of article thirteen-F of the public health law.

(e) The commissioner may refuse to register as a retail dealer or may revoke the registration of a retail dealer where the applicant's or retail dealer's place of business is at the same premises as that of a retail dealer whose retail dealer registration has been revoked and where such revocation is still in effect, unless the applicant or retail dealer provides the commissioner with adequate documentation demonstrating that such applicant or retail dealer acquired the premises or business through an arm's length transaction as defined in this paragraph and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original registrant to avoid the

effect of the previous revocation for the same premises. For purposes of this paragraph, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original registrant to avoid the effect of the previous revocation for the same premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original registrant to avoid the effect of the previous revocation for the same premises:

- (i) a sale between relatives; or
- (ii) a sale between related companies or partners in a business; or
- (iii) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original registrant to avoid the effect of the previous revocation for the same premises.

(f) In addition to the grounds for refusal of a registration specified in section eleven hundred thirty-four of this chapter, the commissioner may refuse to register any person as a retail dealer where any tax under this chapter, or a tax or fee administered by the commissioner under any other law, has been finally determined to be due from such person, or from a person required to collect tax with respect to such person or another person, and has not been paid.

2. (a) (i) Every retail dealer and every person owning or, if the owner is not the operator, then any person operating one or more vending machines through which cigarettes or tobacco products are sold in this state, who is required under section eleven hundred thirty-six of this chapter to file a return for the quarterly period ending on the last day of August, nineteen hundred ninety or for the quarterly period ending on the last day of August in any year thereafter, must file an application for registration under this section with that quarterly return, in such

form as shall be prescribed by the commissioner.

(ii) Each retail dealer must pay an application fee with the quarterly return of three hundred dollars for each retail place of business in this state through which it sells cigarettes or tobacco products.

(iii) Every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state, regardless of whether located on the premises of the vending machine owner or, if the owner is not the operator, then the premises of the operator or the premises of any other person, must pay an application fee with the quarterly return of one hundred dollars for each vending machine. The department will issue a registration certificate, as prescribed by the commissioner, after receipt of a registration application and the appropriate registration fee, prior to the next succeeding January first.

(b) Every retail dealer and every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state who commences business after the last day of August, nineteen hundred ninety, or who commences selling cigarettes or tobacco products at retail through a new or different place of business in this state after such date, or who commences selling cigarettes or tobacco products through new or different vending machines after such date, must file with the commissioner an application for registration, in a form prescribed by him or her, at least thirty days prior to commencing business or commencing sales. Each application must be accompanied by an application fee of three hundred dollars for each retail place of business and one hundred dollars for each vending machine to be registered. The department, within ten days after receipt of an application for registration under this paragraph and payment of the proper fee for application for registration, will issue a registration certificate, as prescribed by the commissioner, for each retail place of business or cigarette or tobacco products vending machine registered.

(c) In addition to the powers granted to the commissioner of taxation and finance in this chapter, the commissioner is hereby authorized to make provisions for the joint administration, in whole or in part, of the state and local taxes imposed by article twenty-eight and authorized

to be imposed by article twenty-nine of this chapter and the registrations and fees for application for registration required by this section, including the joint reporting, assessment, collection and determination of such taxes and the registration and fees provided for in this section, and for that purpose, to prescribe that any of the commissioner's functions under such articles or this section, and any returns, forms, statements, documents or information to be submitted to the commissioner under such articles or this section, any books and records to be kept for purposes of the taxes imposed or authorized to be imposed by such articles or for purposes of this section, any schedules of amounts to be collected under such articles or this section, any registration required under such articles or this section, and the payment of taxes under such articles, or of fees under this section shall be on a joint basis.

(d) Except as otherwise provided in this section, all the provisions of article twenty-eight of this chapter relating to the personal liability for the tax, administration, collection and determination of tax, and deposit and disposition of revenue, including section eleven hundred thirty-eight of this chapter relating to determination of tax and section eleven hundred forty-five of this chapter (but only paragraphs one and two of subdivision (a) of such section) relating to penalties and interest for failure to file a return or pay tax within the time required, shall apply to the applications for registration and the fees for filing such applications required by this section and the penalty imposed pursuant to subdivision three of this section, as if such applications were returns required under section eleven hundred thirty-six of this chapter and such filing fees, penalties and interest were taxes required to be paid pursuant to such article twenty-eight, in the same manner and with the same force and effect as if the language of such provisions of such article twenty-eight had been incorporated in full into this article, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant thereto and with such other modifications as may be necessary to adapt the language of such provisions to the provisions of this section. Provided, however, that the commissioner of taxation and finance shall refund or credit an application fee paid with respect to the registration of a vending machine or a retail place of business in this

state through which cigarettes or tobacco products were to be sold if, prior to the beginning of the calendar year with respect to which such registration relates, the certificate of registration described in paragraph (a) of this subdivision is returned to the department of taxation and finance, or if such certificate has been destroyed, the retail dealer or vending machine operator satisfactorily accounts to the commissioner for the missing certificate, but such vending machine or retail place of business may not be used to sell cigarettes or tobacco products in this state during such calendar year, unless it is re-registered. The provisions of section eleven hundred thirty-nine of this chapter shall apply to the refund or credit authorized by the preceding sentence and for such purposes, such refund or credit shall be deemed a refund of tax paid in error provided, however, no interest shall be allowed or paid on any such refund.

3. In addition to any other penalty imposed by this chapter: (a) Any retail dealer who violates the provisions of this section, after due notice and an opportunity for a hearing, for a first violation is liable for a civil fine not less than five thousand dollars but not to exceed twenty-five thousand dollars and for a second or subsequent violation within three years following a prior finding of violation is liable for a civil fine not less than ten thousand dollars but not to exceed thirty-five thousand dollars; or

(b) Any person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state and who violates the provisions of this section, after due notice and an opportunity for a hearing, for a first violation is liable for a civil fine not less than seven hundred fifty dollars but not to exceed two thousand dollars and for a second or subsequent violation within three years following a prior finding of violation be liable for a civil fine not less than two thousand dollars but not to exceed six thousand dollars.

(c) If a retail dealer does not possess a valid registration, either because it failed to obtain a registration or its registration is suspended or revoked and the commissioner or their designee, pursuant to their authority under this article, attempts to inspect such premises for a violation of this section and such retail dealer, including an

agent thereof, is found, after notice and opportunity to be heard, to have refused such inspection, such retail dealer shall be subject to a penalty of up to four thousand dollars for a first refusal and up to eight thousand dollars for a second or subsequent refusal within three years of a prior refusal.

4. (a) If a retail dealer possesses or sells unstamped or unlawfully stamped packages of cigarettes, or if a retail dealer is also licensed as an agent pursuant to section four hundred seventy-two and it possesses unlawfully stamped packages of cigarettes or sells unstamped or unlawfully stamped packages of cigarettes at retail, (i) its registration shall be revoked for a period of one year, or (ii) for a second such possession or sale within a period of five years by a retail dealer or any affiliated person of such retail dealer, the registration of such retail dealer and the registration of any retail dealer that is an affiliated person of such retail dealer shall be revoked for a period of three years, or (iii) for a third such possession or sale within a period of five years by a retail dealer or any affiliated person of such retail dealer, the registration of such retail dealer and the registration of any retail dealer that is an affiliated person of such retail dealer shall be revoked for a period of five years. A retail dealer registration shall be revoked pursuant to this subdivision immediately upon such dealer's receipt of written notice of revocation from the commissioner. If unstamped or unlawfully stamped cigarettes are found in a retail dealer's warehouse or a warehouse of any affiliated person of such retail dealer, the revocation of the retail dealer's registration pursuant to this subdivision shall be applicable to each retail place of business in this state through which such retail dealer and any affiliated person of such retail dealer sells cigarettes.

(a-1) If a retail dealer, including an agent thereof, refuses to comply with the requirements of subdivision four of section four hundred seventy-four of this article its registration may be revoked (i) for a period of one year, or (ii) for a second such violation within a period of five years for up to three years, or (iii) for a third or subsequent violation within a period of seven years for a period up to ten years. A retail dealer registration shall be considered to be revoked pursuant to this subdivision immediately upon such dealer's receipt of written

notice of revocation from the commissioner.

(b) A retail dealer who is notified of a revocation of its registration pursuant to this subdivision shall have the right to have the revocation reviewed by the commissioner or his or her designee by contacting the department at a telephone number or an address to be disclosed in the notice of revocation within ten days of such dealer's receipt of such notification. The retail dealer may present written evidence or argument in support of its defense to the revocation, or may appear at a scheduled conference with the commissioner or his or her designee to present oral arguments and written and oral evidence in support of such defense. The commissioner or his or her designee is authorized to delay the effective date of the revocation to enable the retail dealer to present further evidence or arguments in connection with the revocation. The commissioner or his or her designee shall cancel the revocation of registration if the commissioner or his or her designee is not satisfied by a preponderance of the evidence that the retail dealer violated paragraph (a) or (a-1) of this subdivision, as may be applicable.

(c) An order of revocation of a retail dealer registration shall not be reviewable by the division of tax appeals, but may be reviewed pursuant to article seventy-eight of the civil practice law and rules by a proceeding commenced in the supreme court within four months of the revocation of registration petitioning that the order of revocation be enjoined or set aside. Such proceeding shall be instituted in the county where the commissioner has his or her principal office. Upon the filing of such petition the court shall have jurisdiction to set aside such order of revocation, in whole or in part, or to dismiss the petition. The jurisdiction of the supreme court shall be exclusive and its order dismissing the petition or enjoining or setting aside such order, in whole or in part, shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided by law for appeals from a judgment in a special proceeding. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other civil matters. All such proceedings for review shall be heard on the petition, transcript and other papers, and on appeal shall be heard on the record,

without requirement of printing.

(d) After review of the revocation of registration by the commissioner or his or her designee is complete, or the time within which a retail dealer may request such review has expired without such a request having been made, notice of the revocation of a retail dealer registration pursuant to paragraph (a) of this subdivision shall be given by the commissioner to the head of the division of the lottery for the purpose of enforcement of section sixteen hundred seven of this chapter and such division may suspend or revoke any license issued with respect to a lottery agent's specific location pursuant to article thirty-four of this chapter if such lottery agent is a retail dealer of cigarettes whose registration for such location is suspended or revoked pursuant to this section. In addition, notice of such revocation shall also be given to the state liquor authority and such revocation shall constitute cause, for purposes of section one hundred eighteen of the alcoholic beverage control law, for revocation, cancellation or suspension of any license or permit issued pursuant to such law.

5. Except for subdivision (i) of section eighteen hundred fourteen of this chapter, the criminal penalties set forth in article thirty-seven of this chapter shall not apply to a violation of this section.

6. (a) No retail dealer who has its retail dealer registration cancelled, suspended or revoked pursuant to this section or has been forbidden from selling cigarettes or tobacco products pursuant to paragraph (j) of subdivision one of section four hundred eighty of this article shall possess cigarettes or tobacco products in any place of business, cart, stand, truck or other merchandising device in this state beginning on the tenth day after such cancellation, suspension, revocation, or forbiddance and continuing for the duration of the same; provided however, such retail dealer shall not be prohibited before the tenth day after such cancellation, suspension, revocation, or forbiddance from selling or transferring its inventory of lawfully stamped cigarettes or tobacco products on which the taxes imposed by this article have been assumed or paid to a properly registered retail dealer whose registration is not cancelled, suspended, or revoked or who has not been forbidden from selling cigarettes or tobacco products.

(b) No retail dealer shall possess cigarettes or tobacco products in any place of business, cart, stand, truck or other merchandising device in this state unless it has obtained a valid retail dealer registration from the commissioner.

(c) The possession of cigarettes or tobacco products by an unlicensed retail dealer in violation of paragraph (a) or (b) of this subdivision shall be subject to the penalties authorized by subdivision three of this section.

§ 480-b. Prohibition against the stamping of certain cigarettes. 1. Every tobacco product manufacturer as defined by section thirteen hundred ninety-nine-oo of the public health law whose cigarettes are sold for consumption in this state shall annually certify under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer: (a) is a participating manufacturer as defined in subdivision one of section thirteen hundred ninety-nine-pp of the public health law; or (b) is in full compliance with subdivision two of section thirteen hundred ninety-nine-pp of the public health law. Such certification shall be executed and delivered to the commissioner, the attorney general and any agent who affixes New York state cigarette tax stamps to cigarettes of such tobacco product manufacturer, no earlier than the sixteenth day of April and no later than the thirtieth day of April of each year, and shall be accompanied by a list setting forth each of the cigarette brands of such tobacco product manufacturer sold for consumption in New York state. Agents shall retain such certifications for a period of five years.

2. An agent may not affix, or cause to be affixed, a New York state cigarette tax stamp to a package of cigarettes if either: (a) the tobacco product manufacturer of such cigarettes has not provided such agent with the certification required by subdivision one of this section; or (b) the commissioner has notified such agent that such tobacco product manufacturer is in violation of section thirteen hundred ninety-nine-pp of the public health law, or has filed a false certification under subdivision one of this section, and such agent has not been notified by the commissioner that such violation has ceased.

2-a. An agent may not affix, or cause to be affixed, a New York state cigarette tax stamp to a package of cigarettes unless: (a) the cigarettes have been certified by the manufacturer if certification is required under subdivision three of section one hundred fifty-six-c of the executive law; and (b) the package has been marked in such manner as may be required by subdivision six of section one hundred fifty-six-c of the executive law.

3. The commissioner shall prescribe the form of the certification required to be filed pursuant to subdivision one of this section, and is authorized to collect and retain any information he or she may require to assure compliance with this section by agents and tobacco product manufacturers.

§ 480-c. Prohibition against the sale of certain tobacco products. 1. Every tobacco product manufacturer, as defined by section thirteen hundred ninety-nine-oo of the public health law, whose roll-your-own tobacco is sold for consumption in this state, must annually certify under penalty of perjury that, as of the date of that certification, the tobacco product manufacturer: (a) is a participating manufacturer as defined in subdivision one of section thirteen hundred ninety-nine-pp of the public health law; or (b) is in full compliance with subdivision two of section thirteen hundred ninety-nine-pp of the public health law. The certification must be executed and delivered to the commissioner, the attorney general, and any distributor of roll-your-own tobacco of such tobacco product manufacturer, no earlier than the sixteenth day of April and no later than the thirtieth day of April of each year, and must be accompanied by a list setting forth each of the brands of roll-your-own tobacco of the tobacco product manufacturer sold for consumption in New York state. Distributors must retain the certifications for a period of five years.

2. A distributor must not offer for sale or cause to be sold in this state roll-your-own tobacco of a tobacco product manufacturer if either: (a) the tobacco product manufacturer of the roll-your-own tobacco has

not provided the distributor with the certification required by subdivision one of this section; or (b) the commissioner has notified the distributor that the tobacco product manufacturer is in violation of section thirteen hundred ninety-nine-pp of the public health law, or has filed a false certification under subdivision one of this section, and the distributor has not been notified by the commissioner that the violation has ceased.

3. The commissioner must prescribe the form of the certification required to be filed pursuant to subdivision one of this section, and is authorized to collect and retain any information he or she may require to assure compliance with this section by distributors and tobacco product manufacturers.

§ 481. Penalties and interest. 1. (a)(i)(A) An agent or distributor or other person treated as a distributor pursuant to section four hundred seventy-one-d who or which fails to file a return or to pay any tax within the time required by or pursuant to this article (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of ten per centum of the amount of tax determined to be due as provided in this article plus one per centum of such amount for each month or fraction thereof during which such failure continues after the expiration of the first month after such return was required to be filed or such tax became due, not exceeding thirty per centum in the aggregate.

(B) If a tax on cigarettes or on tobacco products under this article is not paid when due by any other person, the person liable for the payment of such tax shall be subject to a penalty of fifty per centum of the amount of such tax determined to be due as provided in this article plus one per centum of such amount for each month or fraction thereof during which such failure to pay continues after the expiration of the first month after such tax became due.

(C) In the case of a failure to file such return within sixty days of the date prescribed for filing of such return by or pursuant to this article (determined with regard to any extension of time for filing), the penalty imposed by this paragraph shall not be less than the lesser

of one hundred dollars or one hundred per centum of the amount required to be shown as tax on such return. For the purpose of the preceding sentence, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(ii) If any amount of tax is not paid on or before the last date prescribed in this article for payment, interest on such amount at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subparagraph shall not be paid if the amount thereof is less than one dollar.

(iii) If the tax commission determines that such failure or delay was due to reasonable cause and not due to willful neglect, it shall remit all or part of such penalty. The tax commission shall promulgate rules and regulations as to what constitutes reasonable cause.

(iv) If the failure to pay any tax within the time required by or pursuant to this article is due to fraud, in lieu of the penalties and interest provided for in subparagraphs (i) and (ii) of this paragraph, there shall be added to the tax (A) a penalty of two times the amount of tax due, plus (B) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter for the period beginning on the last day prescribed by this article for the payment of such tax (determined without regard to any extension of time for paying) and ending on the day on which such tax is paid.

(v) The penalties and interest provided for in this paragraph shall be determined, assessed, collected and paid in the same manner as the taxes imposed by this article and shall be disposed of as hereinafter provided with respect to moneys derived from the tax. Interest under this paragraph shall be compounded daily.

(b) (i) In addition to any other penalty imposed by this article, the commissioner may (A) impose a penalty of not more than six hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes in unstamped or unlawfully stamped packages

in the possession or under the control of any person or (B) impose a penalty of not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in the possession or under the control of any person. In addition, the commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars, one pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of two hundred fifty cigars, five pounds of tobacco, or seventy-five units of alternative nicotine products, in the possession or under the control of any person and a penalty of not more than one hundred fifty dollars for each fifty cigars, pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of five hundred cigars, ten pounds of tobacco, or one hundred fifty units of alternative nicotine products, in the possession or under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; provided, however, that any such penalty imposed shall not exceed seven thousand five hundred dollars in the aggregate. The commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars, one pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of fifty cigars, one pound of tobacco, or fifteen units of alternative nicotine products, in the possession or under the control of any tobacco products dealer or distributor appointed by the commissioner, and a penalty of not more than one hundred fifty dollars for each fifty cigars, pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of two hundred fifty cigars, five pounds of tobacco, or seventy-five units of alternative nicotine products, in the possession or under the control of any such dealer or distributor, with respect to which the tobacco products tax has not been paid or assumed by a distributor or a tobacco products dealer; provided, however, that any such penalty imposed shall not exceed fifteen thousand dollars in the aggregate.

(ii) The penalties imposed by this subparagraph may be imposed by the commissioner in addition to any other penalty imposed by this article, but in lieu of the penalties imposed by subparagraph (i) of this paragraph:

(A)(I)(1) not less than thirty dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes but less than or equal to five thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person or (2) not less than thirty dollars but not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, less than or equal to two hundred fifty unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, knowingly in the possession or knowing under the control of any person;

(II)(1) not less than seventy-five dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of five thousand cigarettes but less than or equal to twenty thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person or (2) not less than seventy-five dollars but not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in excess of two hundred fifty unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions but less than or equal to one thousand unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, knowingly in the possession or knowingly under the control of any person; and

(III)(1) not less than one hundred dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of twenty thousand cigarettes in unstamped or unlawfully stamped packages, knowingly in the possession or knowingly under the control of any person or (2) not less than one hundred dollars but not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in excess of one thousand unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, knowingly in the possession or knowingly under the control of any person.

(B)(I) not less than twenty-five dollars but not more than one hundred dollars for each fifty cigars, one pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of two

hundred fifty cigars, five pounds of tobacco, or seventy-five units of alternative nicotine products, knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; and

(II) not less than fifty dollars but not more than two hundred dollars for each fifty cigars, pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of five hundred cigars, ten pounds of tobacco, or one hundred fifty units of alternative nicotine products, knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; provided, however, that any such penalty imposed under this clause shall not exceed ten thousand dollars in the aggregate.

(C)(I) not less than twenty-five dollars but not more than one hundred dollars for each fifty cigars, one pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of fifty cigars, one pound of tobacco, or fifteen units of alternative nicotine products, knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; and

(II) not less than fifty dollars but not more than two hundred dollars for each fifty cigars, pound of tobacco, or fifteen units of alternative nicotine products, or fraction thereof, in excess of two hundred fifty cigars, five pounds of tobacco, or seventy-five units of alternative nicotine products, knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or a tobacco products dealer; provided, however, that any such penalty imposed under this clause shall not exceed twenty thousand dollars in the aggregate.

(iii) Any penalty provided for in this paragraph shall be determined as provided in section four hundred seventy-eight of this chapter, and may be reviewed only pursuant to such section. Such penalty shall be collected in the same manner as the taxes imposed by this article. The commissioner in the commissioner's discretion, may remit all or part of such penalty. Such penalty shall be paid to the department and disposed of as hereinafter provided with respect to moneys derived from the tax.

(c) In addition to any other penalties that may be imposed by law, the commissioner may impose a civil penalty not to exceed five thousand dollars against any tobacco product manufacturer or cigarette tax agent who violates the provisions of section four hundred eighty-b of this article, including but not limited to the filing of a false certification, and may seek to suspend or cancel any license, registration or appointment which has been issued to such person pursuant to this chapter.

(d) In addition to any other penalties that may be imposed by law, the commissioner may impose a civil penalty not to exceed five thousand dollars against any tobacco product manufacturer or distributor who violates the provisions of section four hundred eighty-c of this article, including but not limited to the filing of a false certification, and may seek to suspend or cancel any license, registration or appointment that has been issued to the tobacco product manufacturer or distributor under this chapter.

2. (a) The possession within this state of more than four hundred cigarettes in unstamped or unlawfully stamped packages or more than two hundred fifty cigars, or more than five pounds of tobacco other than roll-your-own tobacco, or more than thirty-six ounces of roll-your-own tobacco, or more than seventy-five units of alternative nicotine products, by any person other than an agent or distributor, as the case may be, at any one time shall be presumptive evidence that such cigarettes or tobacco products are subject to tax as provided by this article.

(b) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing tobacco products or unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of tobacco products or unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

3. For purposes of this chapter, the certificate of the commissioner of taxation and finance to the effect that a tax or fee imposed by this article has not been paid, that a return required by or under the provisions of this article has not been filed, or that information has not been supplied, as required by or under the provisions of this article, or that a bond or other security required by or pursuant to the provisions of this article has not been filed, or that books, accounts, records, memoranda, documents or papers have not been supplied as required by or pursuant to the authority of this article, or that a retail dealer or vending machine owner or operator is not currently or validly registered as required by this article shall be prima facie evidence that such tax or fee has not been paid, such return not filed, such information not supplied, such bond or other security not filed, that such books, accounts, records, memoranda, documents or papers have not been supplied, or that such retail dealer or vending machine owner or operator is not currently or validly registered.

4. Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

§ 482. Deposit and disposition of revenue. (a) All taxes, fees, interest and penalties collected or received by the commissioner under this article and article twenty-A of this chapter shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. (b) From the taxes, interest and penalties collected or received by the commissioner under sections four hundred seventy-one and four hundred seventy-one-a of this article, effective on and after March first, two thousand, forty-nine and fifty-five hundredths, and effective on and after February first, two thousand two, forty-three and seventy hundredths; and effective on and after May first, two thousand two, sixty-four and fifty-five hundredths; and effective on and after April first, two thousand three, sixty-one and twenty-two hundredths percent; and effective on and after June third, two thousand eight, seventy and sixty-three hundredths percent; and effective on and after July first, two thousand ten, seventy-six

percent collected or received under those sections must be deposited to the credit of the tobacco control and insurance initiatives pool to be established and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law.

(c) From the taxes, interest and penalties collected or received by the commissioner under section four hundred seventy-one-b of this article, effective April first, two thousand twenty-seven, fifty million dollars from the moneys collected or received under such section shall be deposited annually to the credit of the tobacco control and insurance initiatives pool to be established and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law.

§ 482-a. Joint administration. In addition to the powers granted to the tax commission in this chapter, the commission is hereby authorized to make provisions pursuant to rules and regulations for the joint administration, in whole or in part, of the tax imposed by this article and the cigarette marketing standards contained in article twenty-A of this chapter, including the joint reporting of information, and for that purpose to prescribe that any of the commission's functions under such articles, and any returns, forms, statements, documents or information to be submitted to the commission under such articles, any books and records to be kept for purposes of such articles, or any license under such articles shall be on a joint basis.

ARTICLE 20-A

CIGARETTE MARKETING STANDARDS

Section 483. Definitions.

484. Unlawful acts; violations of article.

485. Determination of cost of agent, retail dealer or wholesale dealer.

486. Exceptions.

487. Secrecy requirement.

488. Joint administration.

489. Registration of chain stores.

§ 483. Definitions. (a) Any term which is defined by section four hundred seventy of this chapter shall have the same meaning when used in this article, except that for purposes of this article the following terms shall have the meanings herein indicated:

1. "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the agent who purchases from the manufacturer, or the replacement cost of cigarettes to the agent, in the quantity last purchased, whichever is lower, less all trade discounts, except discounts for cash, to which shall be added the full face value of any stamps which may be required by law.

2. "Wholesale dealer" shall mean any person, other than an agent, who sells cigarettes to retail dealers or other persons for purposes of resale only and who maintains a separate warehousing facility for the purpose of receiving and distributing cigarettes and conducting its wholesale business. If such person is also a retail dealer, such person shall maintain separate premises for such retail business. It shall not include a vending machine operator.

3. "Chain store" shall mean any person or persons who owns or maintains fifteen or more retail outlets in New York state, having one hundred percent common ownership, through which cigarettes are sold at retail. Vending machine operators who sell cigarettes at not less than fifteen separate outlets shall be considered to be chain stores. It shall also include cooperative members, franchisees and large volume outlets. No person shall be considered to be a chain store unless such person has been registered with the commissioner of taxation and finance as provided in section four hundred eighty-nine of this chapter.

4. "Retail dealer" means any person engaged in selling cigarettes at retail, and shall include a chain store, a wholesale dealer or an agent for purposes of its sales of cigarettes to consumers.

5. "Cooperative member" shall mean any member of a "cooperative" as

defined in subdivision (c) of section three of the cooperative corporations law, which operates a distribution center from which members purchase grocery products, including prepackaged food and non-food products such as paper products, soaps and detergents for resale and whose members sell cigarettes at retail through fifteen or more separate establishments in New York state. In order to qualify as a "cooperative member" for the purposes of this article, a dealer must share in the profits and losses of the cooperative and must have purchased at least twenty-five percent of the merchandise it purchased for resale during the preceding three months from such cooperative, excluding cigarettes and petroleum products. Such volume of purchases shall be measured by the amount paid for such merchandise, prior to any patronage dividends or refunds based on patronage.

The registrations of those cooperative members registered as chain stores prior to the effective date of the chapter of the laws of nineteen hundred ninety which added this paragraph shall not be revoked by reason of their failure to meet the twenty-five percent purchase requirement, the requirement that a cooperative member belongs to a cooperative which operates a distribution center or the sharing in the profits and losses requirement of this paragraph five, and upon each successive reregistration pursuant to section four hundred eighty-nine of this chapter, such cooperative members shall not be subject to such requirements, but shall be subject to all other requirements of this article.

6. "Franchisee" shall mean any person or persons engaged in the sale of cigarettes as a retail dealer who is a "franchisee" as defined in article thirty-three of the general business law, and whose franchisor franchises fifteen or more separate retail establishments in New York state through which cigarettes are sold.

7. "Large volume outlet operator" shall mean any person or persons who sell cigarettes at one or more retail outlets each of which had annual gross sales in the previous calendar year of more than two million dollars excluding petroleum products in this state.

(b) 1. (A) The term "cost of the agent" shall mean the basic cost of

cigarettes plus the cost of doing business by the agent as evidenced by the accounting standards and methods regularly employed by said agent in his determination of costs for the purpose of federal income tax reporting for the total operation of his establishment, and must include, without limitation, labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, interest payable, all types of licenses, taxes, insurance and advertising expressed as a percentage and applied to the basic cost of cigarettes. Any fractional part of a cent in the cost to the agent per carton of cigarettes shall be rounded off to the next higher cent. In the case of sales at retail by an agent, the "cost of the agent" shall be the same as the "cost of the retail dealer". In the case of sales of cigarettes to a chain store having fifteen or more retail outlets, excluding vending machine operators, which are delivered to a central warehouse owned and operated by such chain store and which are delivered to its retail outlets by the chain store, the "cost of the agent" shall be presumed to be the basic cost of cigarettes. There shall be determined a separate cost of the agent for sales to wholesale dealers and for sales to retail dealers.

(B) In the absence of the filing with the commissioner of satisfactory proof of a lesser cost of doing business of the agent making the sale, the cost of doing business by the agent shall be presumed to be seven-eighths of one percent of the basic cost of cigarettes for sales to wholesale dealers plus one cent per package of ten cigarettes, two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes, one and one-half percent of the basic cost of cigarettes for sales to chain stores plus one cent per package of ten cigarettes, two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes and three and seven-eighths percent of the basic cost of cigarettes with respect to sales to retail dealers plus one cent per package of ten cigarettes, two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes and the

foregoing cents per pack shall be included in the "cost of doing business by the agent" referred to in paragraphs two and three of this subdivision.

2. (A) The term "cost of the wholesale dealer" shall mean the basic cost of cigarettes plus the cost of doing business by the wholesale dealer as evidenced by the accounting standards and methods regularly employed by said wholesale dealer in his determination of costs for the purpose of federal income tax reporting for the total operation of his establishment, and must include, without limitation, labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, interest payable, all types of licenses, taxes, insurance and advertising expressed as a percentage and applied to the basic cost of cigarettes, plus the cost of doing business by the agent with respect to sales of cigarettes to wholesale dealers. Any fractional part of a cent in the cost to the wholesale dealer per carton of cigarettes shall be rounded off to the next higher cent. In the case of sales at retail by a wholesale dealer, the "cost of the wholesale dealer" shall be the same as the "cost of the retail dealer". There shall be determined a separate cost of the wholesale dealer for sales to chain stores and for sales to retail dealers.

(B) In the absence of the filing with the tax commission of satisfactory proof of a lesser cost of doing business of the wholesale dealer making the sale, the cost of doing business by the wholesale dealer with respect to sales to retail dealers shall be presumed to be three per centum of the basic cost of cigarettes, and with respect to sales to chain stores, five-eighths of one percent of the basic cost of cigarettes.

3. (A) The term "cost of the retail dealer" shall mean the basic cost of cigarettes plus the cost of doing business by the retail dealer as evidenced by the accounting standards and methods regularly employed by said retail dealer in his determination of costs for the purpose of federal income tax reporting for the total operation of his establishment, and shall include, without limitation, labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, interest payable, all types of

licenses, taxes, insurance and advertising expressed as a percentage and applied to the basic cost of cigarettes, plus the cost of doing business by the agent with respect to sales of cigarettes to retail dealers. Any fractional part of a cent in the cost to the retail dealer per package or per carton shall be rounded off to the next higher cent.

(B) In the absence of the filing with the commissioner of taxation and finance of satisfactory proof of a lesser cost of doing business by the retail dealer making the sale, the cost of doing business by the retail dealer shall be presumed to be seven per centum of the sum of the basic cost of cigarettes plus the cost of doing business by the agent with respect to cigarettes sold to retail dealers.

§ 484. Unlawful acts; violations of article. (a) Notwithstanding any other provision of law, it shall be unlawful and a violation of this article:

1. For any agent, wholesale dealer or retail dealer, with intent to injure competitors or destroy or substantially lessen competition, or with intent to avoid the collection or paying over of such taxes as may be required by law, to advertise, offer to sell, or sell cigarettes at less than cost of such agent wholesale dealer or retail dealer, as the case may be.

2. For any wholesale dealer:

(A) to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than the cost of the agent with respect to sales to wholesale dealers; or

(B) to induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes.

3. For any chain store:

(A) to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than the cost of the agent with respect to sales to chain stores; or

(B) to induce or attempt to induce or to procure or attempt to procure

any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes.

4. For any retail dealer:

(A) to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than the cost of the agent for sales to retail dealers, if purchased from an agent, or at a price less than the cost of the wholesale dealer; or

(B) to induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes.

5. (A) Upon a first violation of any of the provisions of this article, after due notice and opportunity for a hearing, the commissioner may suspend the license of any agent or wholesale dealer for a period of not more than thirty days or impose a civil fine not to exceed twenty thousand dollars or both such suspension and fine.

(B) Upon a second or subsequent violation committed within three years following a prior finding of violation, after due notice and opportunity for a hearing, the commissioner shall revoke the license of any agent or wholesale dealer unless (i) the penalty imposed for the first violation was a fine only; or (ii) the commissioner determines, on a showing by the agent or wholesale dealer, that the second or subsequent violation is due to reasonable cause or that such agent or wholesale dealer acted in good faith, in which case the commissioner may suspend such license for a period of not more than sixty days or impose a civil fine not to exceed fifty thousand dollars or both such suspension and fine.

(C) In determining whether to suspend or revoke or in assessing the amount of any fine under this paragraph the commissioner shall give due consideration to the gravity of the violation, the size of the agent's or wholesale dealer's business, the amount of the sale in violation of this article below the minimum markup and the history of previous violations. The penalties provided for in this paragraph shall be determined, assessed, collected and paid in the manner provided in section four hundred seventy-eight of this chapter, as if such penalties were taxes imposed pursuant to this article.

6. Evidence of advertisement, offering to sell or sale of cigarettes by any agent, wholesale dealer, chain store or retail dealer at less than cost, or evidence of any offer of a rebate in price, or giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatsoever in connection with the sale of cigarettes, or the inducing or attempt to induce or to the procuring or the attempt to procure the purchase of cigarettes at a price less than cost of the agent, wholesale dealer, chain store or the retail dealer, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition, or of intent to avoid the collection or paying over of such taxes as may be required by law.

(b) 1. An action may be maintained in the supreme court to prevent, restrain or enjoin a violation, or threatened violation, of any of the provisions of this article. Such an action may be instituted by any person injured by any violation or threatened violation of this article, or by the tax commission. If in such action a violation or threatened violation of this article shall be established, the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by such plaintiff.

2. In the event that no injunctive relief is sought or required, any person injured by a violation of this article may maintain an action for damages and costs of suit in the supreme court as provided for in the civil practice law and rules.

(c) Any contract, expressed or implied, made by any person in violation of any of the provisions of this article is declared to be an illegal and void contract, and no recovery thereon shall be had.

(d) The provisions of this article shall not be applicable to any sale as to which the tax imposed by section four hundred seventy-one of this chapter is not applicable or to a sale to the department of corrections and community supervision of this state for sale to or use by

incarcerated individuals in institutions under the jurisdiction of such department.

§ 485. Determination of cost of agent, retail dealer or wholesale dealer. (a) 1. In determining "cost of the retail dealer", "cost of the agent" and "cost of the wholesale dealer" the tax commission or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any such person complained against under any of the provisions of this article purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true costs, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

2. Merchandise given gratis or payment made to an agent, retail dealer or wholesale dealer by the manufacturer thereof for display, or advertising, or promotion purposes, or otherwise, shall not be considered in determining the cost of cigarettes to the agent, retail dealer or wholesale dealer.

(b) In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale, or sales involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the agent's, retail dealer's or wholesale dealer's combined selling price shall not be below the cost of the agent, the cost of the retail dealer or the cost of the wholesale dealer, respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

(c) When one wholesale dealer sells cigarettes to any other wholesale dealer, the former shall not be required to include in his selling price to the latter, the cost of the wholesale dealer, as defined by paragraph two of subdivision (b) of section four hundred eighty-three of this article, except that no such sale shall be made at a price less than the cost of the agent for sales to wholesale dealers as defined by paragraph

one of subdivision (b) of section four hundred eighty-three of this article, but the latter wholesale dealer, upon resale to a retail dealer, shall be deemed to be the wholesale dealer governed by the provisions of paragraph two of subdivision (b) of section four hundred eighty-three of this article.

(d) When one agent sells cigarettes to any other agent, the former shall not be required to include in his selling price to the latter, the cost of the agent, as defined by paragraph one of subdivision (b) of section four hundred eighty-three of this article, except that no such sale shall be made at a price less than the basic cost of cigarettes, as defined by paragraph one of subdivision (a) of section four hundred eighty-three, but the latter agent, upon resale of such cigarettes, shall be deemed to be the agent governed by paragraph one of subdivision (b) of section four hundred eighty-three of this article. Cigarettes sold by an agent to an agent must be picked up at the warehouse of the selling agent, or delivered to the warehouse of the purchasing agent.

§ 486. Exceptions. (a) The provisions of this article shall not apply to sales made:

1. As an isolated transaction and not the usual course of business; or
2. Where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

(b) 1. Any retail dealer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retail dealer. Any agent or wholesale dealer may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of services and is selling the same article at cost to him as an agent or as a wholesale dealer, as the case may be. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in subdivision (a) of this section shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price

established at a bankruptcy sale be considered the price of a competitor within the purview of this section.

2. In the absence of proof of the price of a competitor, the cost of the retail dealer or the cost of the agent or wholesale dealer, as the case may be, which is established pursuant to section four hundred eighty-three of this article, may be deemed the price of a competitor within the meaning of this section.

(c) In establishing the cost of cigarettes of the retail dealer, agent or wholesale dealer, the invoice cost of said cigarettes purchase at a forced bankruptcy, or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retail dealer, agent or wholesale dealer in the quantity last purchased through the ordinary channels of trade.

§ 487. Secrecy requirement. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the tax commission, any tax commissioner, any officer or employee of the department of taxation and finance, any person engaged or retained by such department on an independent contract basis, or any person, who, pursuant to this section, is permitted to inspect any costs or to whom a copy, an abstract or a portion thereof is furnished, or to whom any such information is furnished or any person who in any manner may acquire knowledge of such costs, to divulge or make known in any manner any of the costs of doing business of a retail dealer, or of an agent or wholesale dealer which have been filed with the tax commission pursuant to paragraph one, two or three of subdivision (b) of section four hundred eighty-three of this article, or to divulge the name of any person who has provided information to the tax commission concerning any alleged violation of this article.

(b) The officers and employees charged with the custody of such information shall not be required to divulge any of such information in any action or proceeding in any court, except on behalf of the tax commission in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of

a tax due under this chapter to which the state or the tax commission is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when such information is directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of such information as is pertinent to the action or proceeding, and no more.

(c) This provision shall not be construed to prohibit the disclosure of such information to a retail dealer or to an agent or wholesale dealer, or to its duly authorized representative, in connection with its establishment of a cost of doing business, or to prohibit the publication of statistics so classified as to prevent the identification of particular information concerning the cost of doing business of any retail dealer, agent or wholesale dealer, or the disclosure of the identity of persons licensed as agents or wholesale dealers or registered as chain stores, franchisees, cooperative members or large volume outlets, or the disclosure to the attorney general or other legal representatives of the state in connection with any action or proceeding under this article brought by or against the retail dealer, agent or wholesale dealer, or against whom an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or by the attorney general.

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

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

§ 488. Joint administration. In addition to the powers granted to the tax commission in this chapter, the commission is hereby authorized to make provisions pursuant to rules and regulations for the joint administration, in whole or in part, of the tax imposed by article twenty and article twenty-A of this chapter, including the joint reporting of information, and for that purpose to prescribe that any of the commission's functions under such articles, and any returns, forms,

statements, documents or information to be submitted to the commission under such articles, any books and records to be kept for purposes of such articles, or any license under such articles shall be on a joint basis.

§ 489. Registration of chain stores. Every chain store, including vending machine operators, cooperative members, franchisees and large volume outlet operators, must register with the commissioner of taxation and finance. The fee for such registration shall be three hundred dollars, unless such fee has been paid during the preceding twelve months, in which case, the fee for such registration shall be two hundred dollars. The fee for registration of a chain store which is a vending machine operator which sells cigarettes at not less than fifteen separate outlets shall be two hundred fifty dollars, regardless of the number of vending machines owned or operated, or the number of separate outlets maintained, unless such fee has been paid during the preceding twelve months, in which case, the fee for such registration shall be two hundred dollars. The commissioner may require all chain stores to file a new registration statement not more often than once every three years. Registration statements shall contain such information as the commissioner may require by regulation or instruction. The provisions of section four hundred eighty of this chapter relating to licensing of wholesale dealers shall be applicable to the registration of chain stores, to the extent that such provisions can be made applicable to such registrations, as if such provisions expressly referred to registration of chain stores.

* ARTICLE 20-B

EXCISE TAX ON MEDICAL CANNABIS

Section 490. Excise tax on medical cannabis.

491. Returns to be secret.

* NB Repealed July 5, 2028

* **§ 490. Excise tax on medical cannabis.** 1. (a) For purposes of this

article, the terms "medical cannabis," "registered organization," "certified patient," and "designated caregiver" shall have the same definitions as in section three of the cannabis law.

(b) As used in this section, where not otherwise specifically defined and unless a different meaning is clearly required "gross receipt" means the amount received in or by reason of any sale, conditional or otherwise, of medical cannabis or in or by reason of the furnishing of medical cannabis from the sale of medical cannabis provided by a registered organization to a certified patient or designated caregiver. Gross receipt is expressed in money, whether paid in cash, credit or property of any kind or nature, and shall be determined without any deduction therefrom on account of the cost of the service sold or the cost of materials, labor or services used or other costs, interest or discount paid, or any other expenses whatsoever. "Amount received" for the purpose of the definition of gross receipt, as the term gross receipt is used throughout this article, means the amount charged for the provision of medical cannabis.

2. There is hereby imposed an excise tax on the gross receipts from the sale of medical cannabis by a registered organization to a certified patient or designated caregiver, to be paid by the registered organization, at the rate of three and fifteen-hundredths percent. The tax imposed by this article shall be charged against and be paid by the registered organization and shall not be added as a separate charge or line item on any sales slip, invoice, receipt or other statement or memorandum of the price given to the retail customer.

3. The commissioner may make, adopt and amend rules, regulations, procedures and forms necessary for the proper administration of this article.

4. Every registered organization that makes sales of medical cannabis subject to the tax imposed by this article shall, on or before the twentieth date of each month, file with the commissioner a return on forms to be prescribed by the commissioner, showing its receipts from the retail sale of medical cannabis during the preceding calendar month and the amount of tax due thereon. Such returns shall contain such

further information as the commissioner may require. Every registered organization required to file a return under this section shall, at the time of filing such return, pay to the commissioner the total amount of tax due on its retail sales of medical cannabis for the period covered by such return. If a return is not filed when due, the tax shall be due on the day on which the return is required to be filed.

5. Whenever the commissioner shall determine that any moneys received under the provisions of this article were paid in error, he may cause the same to be refunded, with interest, in accordance with such rules and regulations as he may prescribe, except that no interest shall be allowed or paid if the amount thereof would be less than one dollar. Such interest shall be at the overpayment rate set by the commissioner pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter, or if no rate is set, at the rate of six percent per annum, from the date when the tax, penalty or interest to be refunded was paid to a date preceding the date of the refund check by not more than thirty days. Provided, however, that for the purposes of this subdivision, any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day. Such moneys received under the provisions of this article which the commissioner shall determine were paid in error, may be refunded out of funds in the custody of the comptroller to the credit of such taxes provided an application therefor is filed with the commissioner within two years from the time the erroneous payment was made.

6. The provisions of article twenty-seven of this chapter shall apply to the tax imposed by this article in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the tax imposed by this article, except to the extent that any provision of such article is either inconsistent with a provision of this article or is not relevant to this article.

7. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this

chapter, provided that an amount equal to one hundred percent collected under this article less any amount determined by the commissioner to be reserved by the comptroller for refunds or reimbursements shall be paid by the comptroller to the credit of the medical cannabis trust fund established by section eighty-nine-h of the state finance law.

8. A registered organization that dispenses medical cannabis shall provide to the department information on where the medical cannabis was dispensed and where the medical cannabis was manufactured. A registered organization that obtains cannabis from another registered organization shall obtain from such registered organization information on where the medical cannabis was manufactured.

* NB Repealed July 5, 2028

*** § 491. Returns to be secret.** 1. Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, or any person engaged or retained by such department on an independent contract basis or any person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the contents or any other information relating to the business of a distributor, owner or other person contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, office of cannabis management, or the commissioner in an action or proceeding under the provisions of this chapter or on behalf of the state or the commissioner in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article, when the

returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or in an action or proceeding relating to the regulation or taxation of medical cannabis on behalf of officers to whom information shall have been supplied as provided in subdivision two of this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report by or to a duly authorized officer or employee of the office of cannabis management; or by or to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a registered organization or other person under this article; nor to prohibit the delivery to a registered organization, or a duly authorized representative of such registered organization, a certified copy of any return or report filed by such registered organization pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof. This section shall also not be construed to prohibit the disclosure, for tax administration purposes, to the division of the budget and the office of the state comptroller, of information aggregated from the returns filed by all the registered organizations making sales of, or manufacturing, medical cannabis in a specified county, whether the number of such registered organizations is one or more. Provided further that, notwithstanding the provisions of this subdivision, the commissioner may, in his or her discretion, permit the proper officer of any county entitled to receive an allocation, following appropriation by the legislature, pursuant to this article and section eighty-nine-h of the state finance law, or the authorized representative of such officer, to inspect any return filed under this

article, or may furnish to such officer or the officer's authorized representative an abstract of any such return or supply such officer or such representative with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article.

2. The commissioner, in his or her discretion and pursuant to such rules and regulations as he or she may adopt, may permit the appropriate officers of any other state which regulates or taxes medical cannabis, or the duly authorized representatives of such officers, to inspect returns or reports made pursuant to this article, or may furnish to such other officers, or duly authorized representatives, a copy of any such return or report or an abstract of the information therein contained, or any portion thereof, or may supply any such officers or such representatives with information relating to the business of a registered organization making returns or reports hereunder. The commissioner may refuse to supply information pursuant to this subdivision to the officers of any other state if the statutes of the state represented by such officers, do not grant substantially similar privileges to the commissioner, but such refusal shall not be mandatory. Information shall not be supplied to the appropriate officers of any other state which regulates or taxes medical cannabis, or the duly authorized representatives of any of such officers, unless such officer or other representatives shall agree not to divulge or make known in any manner the information so supplied, but such officers may transmit such information to their employees or legal representatives when necessary, who in turn shall be subject to the same restrictions as those hereby imposed upon such officer or other representatives.

3. (a) Any officer or employee of the state who willfully violates the provisions of subdivision one or two of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

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

* NB Repealed July 5, 2028

ARTICLE 20-C

TAX ON ADULT-USE CANNABIS PRODUCTS

- Section 492. Definitions.
493. Imposition of tax.
494. Registration and renewal.
495. Returns and payment of tax.
496. Records to be kept; penalties.
- 496-a. Returns to be secret.
- 496-b. Administrative provisions.
- 496-c. Additional penalties.
- 496-d. Enforcement.
- 496-e. Notification of enforcement actions.

§ 492. Definitions. For purposes of this article, the following definitions shall apply:

(a) "Adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products, as reflected on the product label, whether or not such adult-use cannabis product is for use by a cannabis consumer as such a consumer is defined in subdivision six of section three of the cannabis law. For purposes of this article, under no circumstances shall adult-use cannabis product include medical cannabis or cannabinoid hemp product as defined in section three of the cannabis law.

(b) "Cannabis" means all parts of the a plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. For purposes of this article, cannabis does not include medical cannabis or cannabinoid hemp product as defined in section three of the cannabis law.

(c) "Cannabis edible product" means a product, containing either cannabis or concentrated cannabis and other ingredients, intended for use or consumption through ingestion, including sublingual or oral absorption.

(d) "Cannabis flower" means the flower of a plant of the genus

cannabis that has been harvested, dried and cured but has not undergone any processing whereby the plant material is transformed into a concentrate, including, but not limited to, concentrated cannabis, or into an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis flower excludes leaves and stem.

(e) "Concentrated cannabis" has the same meaning as the term is defined in section three of the cannabis law.

(f) "Distributor" has the same meaning as the term is defined in section three of the cannabis law.

(g) "Illicit cannabis" means and includes any adult-use cannabis product, including concentrated cannabis and cannabis edible products on which any tax required to have been paid under this chapter has not been paid. Illicit cannabis shall not include any cannabis lawfully possessed in accordance with the cannabis law or penal law.

(h) "Cannabis plant" means cannabis that has not been harvested, or undergone processing, drying or curing.

(i) "Person" means every individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(j) "Sale" means any transfer of title, possession or both, exchange or barter, rental, lease or license to use or consume, conditional, or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor.

(k) "Total THC" has the same meaning as the term defined in section three of the cannabis law.

(l) "Possession for sale" or "possessed for sale" means possession of more than five pounds of adult-use cannabis products, or one pound of concentrated cannabis products or cannabis edible products, at a business or other location used for the storage, distribution or sale of such cannabis products with the intent that such products be sold at retail. Possession shall be presumed to be for sale when the adult-use cannabis products are possessed in any place of business used for the buying and selling of such adult-use cannabis products. Possession shall not be presumed to be for sale when the adult-use cannabis products are

possessed in a residence or other real property, or any personal vehicle on or about such property, not being used as a business for the buying and selling of such adult-use cannabis products.

§ 493. Imposition of tax. (a) There is hereby imposed a tax on adult-use cannabis products sold by a distributor to a person who sells adult-use cannabis products at retail at the rate of nine percent of the amount charged for the sale or transfer of such adult-use cannabis products to such retailer; provided that where a person who distributes adult-use cannabis is licensed under the cannabis law as a microbusiness or registered organization and such person sells adult-use cannabis products at retail, such person shall be liable for the tax, such tax shall accrue at the time of the retail sale, and the amount subject to the tax imposed by this subdivision shall be seventy-five percent of the amount charged by such person for the sale or transfer of such products to a retail customer.

(b) In addition to any other tax imposed by this chapter or other law, there is hereby imposed a tax of nine percent of the amount charged for the sale or transfer of adult-use cannabis products to a retail customer by a person who sells adult-use cannabis products at retail. This tax is imposed on the person who sells adult-use cannabis at retail and shall accrue at the time of such sale or transfer.

(c) In addition to the taxes imposed by subdivisions (a) and (b) of this section, there is hereby imposed a tax on the sale or transfer of adult-use cannabis products to a retail customer by a person who sells adult-use cannabis products at retail at the rate of four percent of the amount charged by such person for such adult-use cannabis product, which tax shall accrue at the time of such sale or transfer. The tax imposed by this subdivision is imposed on a person who sells adult-use cannabis products at retail, and shall be paid to the commissioner in trust for and on account of a city having a population of a million or more, and counties (other than counties wholly within such a city), towns, villages, and cities with a population of less than a million in which a retail dispensary is located.

(d) The taxes imposed by this section shall not apply to sales of adult-use cannabis to a person holding a cannabis research license under

section thirty-nine of the cannabis law.

§ 494. Registration and renewal. (a) (1) Every distributor on whom tax is imposed under this article and every person who sells adult-use cannabis products at retail must file with the commissioner a properly completed application for a certificate of registration and obtain such certificate before engaging in business, provided, however, this section shall not apply to a natural person engaged in lawful activity pertaining to personal use or personal cultivation pursuant to article two hundred twenty-two of the penal law. An application for a certificate of registration must be submitted electronically, on a form prescribed by the commissioner, and must be accompanied by a non-refundable application fee of six hundred dollars. A certificate of registration shall not be assignable or transferable and shall be destroyed immediately upon such person ceasing to do business as specified in such certificate, or in the event that such business never commenced.

(2) Provided, however, that the commissioner shall refund or credit an application fee paid with respect to the registration of an adult-use cannabis business in this state if, prior to the beginning of the period with respect to which such registration relates, the certificate of registration described in paragraph one of this subdivision is returned to the department or, if such certificate has been destroyed, the operator of such business satisfactorily accounts to the commissioner for the missing certificate, but such business may not sell adult-use cannabis products in this state during such period, unless it is re-registered. Such refund or credit shall be deemed a refund of tax paid in error, provided, however, no interest shall be allowed or paid on any such refund.

(b) (1) The commissioner shall refuse to issue a certificate of registration to any applicant and shall revoke the certificate of registration of any such person who does not possess a valid license from the office of cannabis management.

(2) The commissioner may refuse to issue a certificate of registration to any applicant where such applicant:

(i) has a past-due liability as that term is defined in section one

hundred seventy-one-v of this chapter;

(ii) has had a certificate of registration under this article, a license from the office of cannabis management, or any license or registration provided for in this chapter revoked or suspended where such revocation or suspension was in effect on the date the application was filed or ended within one year from the date on which such application was filed;

(iii) has been convicted of a crime provided for in this chapter within one year from the date on which such application was filed or the certificate was issued, as applicable;

(iv) willfully fails to file a report or return required by this article;

(v) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required by this article which is false;

(vi) willfully fails to collect or truthfully account for or pay over any tax imposed by this article;

(vii) has been determined to have possessed illicit cannabis within one year from the date on which such application was filed;

(viii) is a distributor that has been determined to have knowingly sold adult-use cannabis products to any person who sells adult-use cannabis products at retail and who is not registered under this section, or whose registration has been suspended or revoked; or

(ix) has a place of business at the same premises as that of a distributor upon whom tax is imposed under this article, or person who sells adult-use cannabis products at retail, whose registration has been revoked and where such revocation is still in effect, unless the applicant provides the commissioner with adequate documentation demonstrating that such applicant acquired the premises or business through an arm's length transaction as defined in paragraph (e) of subdivision one of section four hundred eighty-a of this chapter and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original registrant to avoid the effect of the previous revocation for the same premises.

(3) The commissioner may revoke the certificate of registration issued to any person who:

(i) has had any license or registration provided for in this chapter

revoked or suspended;

(ii) has been convicted of a crime provided for in this chapter where such conviction occurred not more than one year prior to the date of revocation;

(iii) willfully fails to file a report or return required by this article;

(iv) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required by this article which is false;

(v) willfully fails to collect or truthfully account for or pay over any tax imposed by this article; or

(vi) is a distributor that has been determined to have knowingly sold adult-use cannabis products to any person who sells adult-use cannabis products at retail and who is not registered under this section, or whose registration has been suspended or revoked.

(4) In addition to the grounds for revocation in this subdivision, where a person who holds a certificate of registration is determined to have possessed or sold illicit cannabis:

(1) such registration may be revoked (i) for a period of up to one year for the first such possession or sale by such person;

(ii) for a period of up to three years for a second such possession or sale within a period of five years by such person; and

(iii) for a period of up to five years for a third such possession or sale within a period of five years by such person. A certificate of registration may be revoked pursuant to this paragraph immediately upon such person's receipt of written notice of revocation from the commissioner.

A person who is notified of a revocation of their certificate of registration pursuant to this paragraph shall have the right to have the revocation reviewed by the commissioner or their designee by contacting the department at a telephone number or an address to be disclosed in the notice of revocation within ten days of such person's receipt of such notification. Such person may present written evidence or argument in support of their defense to the revocation or may appear at a scheduled conference with the commissioner or their designee to present oral arguments and written and oral evidence in support of such defense.

The commissioner or their designee is authorized to delay the effective date of the revocation to enable such person to present further evidence or arguments in connection with the revocation. The commissioner or their designee shall cancel the revocation of the certificate of registration if the commissioner or their designee is not satisfied by a preponderance of the evidence that a basis for revocation pursuant to this paragraph exists. An order of revocation of a certificate of registration under this paragraph shall not be reviewable by the division of tax appeals but may be reviewed pursuant to article seventy-eight of the civil practice law and rules by a proceeding commenced in the supreme court within four months of the revocation petitioning that the order of revocation be enjoined or set aside. Such proceeding shall be instituted in the county where the commissioner has their principal office. Upon the filing of such petition the court shall have jurisdiction to set aside such order of revocation, in whole or in part, or to dismiss the petition. The jurisdiction of the supreme court shall be exclusive and its order dismissing the petition or enjoining or setting aside such order, in whole or in part, shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided by law for appeals from a judgment in a special proceeding. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other civil matters. All such proceedings for review shall be heard on the petition, transcript and other papers, and on appeal shall be heard on the record, without requirement of printing.

(c) Where a person that does not possess a certificate of registration under this section has been determined to have possessed or sold any adult-use cannabis product or illicit cannabis:

(1) The commissioner may revoke a certificate of authority issued to such person pursuant to section eleven hundred thirty-four of this chapter for a place of business where such person has been determined to have possessed for sale or to have sold adult-use cannabis product or illicit cannabis three or more times within a period of five years without a certificate of registration.

(2) The commissioner may refuse to issue a certificate of authority under section eleven hundred thirty-four of this chapter to a

distributor upon whom tax is imposed under this article, or a person who sells adult-use cannabis products at retail, who has a place of business at the same premises as that of a person whose certificate of authority has been revoked pursuant to paragraph one of this subdivision and where such revocation is still in effect, unless the applicant provides the commissioner with adequate documentation demonstrating that such applicant acquired the premises or business through an arm's length transaction as defined in paragraph (e) of subdivision one of section four hundred eighty-a of this chapter and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original registrant to avoid the effect of the previous revocation for the same premises.

(d) A certificate of registration shall be valid for the period specified thereon, unless earlier suspended or revoked. Upon the expiration of the term stated on a certificate of registration, such certificate shall be null and void.

(e) Every holder of a certificate of registration must notify the commissioner of changes to any of the information stated on the certificate, or of changes to any information contained in the application for the certificate of registration. Such notification must be made on or before the last day of the month in which a change occurs and must be made electronically on a form prescribed by the commissioner.

(f) Every holder of a certificate of registration under this article shall be required to reapply prior to such certificate's expiration, during a reapplication period established by the commissioner. Such reapplication period shall not occur more frequently than every two years. Such reapplication shall be subject to the same requirements and conditions as an initial application, including grounds for refusal and the payment of the application fee.

(g) Any person who is required to obtain a certificate of registration under subdivision (a) of this section who possesses adult-use cannabis products without such certificate shall be subject to a penalty of up to seven thousand five hundred dollars for a first violation and up to fifteen thousand dollars for a second or subsequent violation within three years following a prior violation. Any such adult-use cannabis product shall be subject to immediate forfeiture to, and seizure by, the

commissioner or their duly authorized representatives, or the duly authorized representatives of the office of cannabis management.

(h) No distributor on whom tax is imposed under this article shall sell any adult-use cannabis product to any person who sells adult-use cannabis products at retail and who is not registered under this section, or whose registration has been suspended or revoked.

§ 495. Returns and payment of tax. (a) Every person on whom tax is imposed under this article shall, on or before the twentieth day of the month following each quarterly period ending on the last day of February, May, August, and November, respectively, file electronically with the commissioner a return on forms to be prescribed by the commissioner, showing the total amount of tax due in such quarterly period, and including such other information as the commissioner may require.

(b) Every person required to file a return under this section shall, at the time of filing such return, pay electronically to the commissioner the total amount of tax due for the period covered by such return. If a return is not filed when due, the tax shall be due on the day on which the return is required to be filed.

§ 496. Records to be kept; penalties. (a) Records to be kept. Every distributor on whom tax is imposed under this article and every person who sells adult-use cannabis products at retail shall maintain complete and accurate records in such form as the commissioner may require including, but not limited to, such items as the total THC content of the adult-use cannabis products sold to or produced by such person; complete records of every retail sale of adult-use cannabis, and any other record or information required by the commissioner. Such records must be preserved for a period of three years after the filing of the return to which such records relate and must be provided to the commissioner upon request.

(b) Penalties. In addition to any other penalty provided in this article or otherwise imposed by law, every distributor on whom tax is imposed under this article and every person who sells adult-use cannabis

products at retail who fails to maintain or make available to the commissioner the records required by this section is subject to a penalty not to exceed five hundred dollars for each month or part thereof for which the failure occurs. This penalty may not be imposed more than once for failures for the same monthly period or part thereof. If the commissioner determines that a failure to maintain or make available records in any month was entirely due to reasonable cause and not to willful neglect, the commissioner must remit the penalty for that month.

(c) The failure of any person who sells adult-use cannabis products at retail, except a person who possesses a valid registered organization adult-use cultivator processor distributor retail dispensary license or microbusiness license issued by the office of cannabis management, to comply with subdivision (a) of this section for the adult-use cannabis products in such person's possession shall be presumptive evidence that the tax thereon has not been paid, and that such person shall be liable for the tax thereon unless evidence of such invoice, payment or assumption shall later be produced.

(d) If books and records are not provided or are determined to be insufficient, the amount of tax due shall be determined by the commissioner from such information as may be available. In the absence of evidence of the wholesale price for the tax imposed by subdivision (a) of section four hundred ninety-three of this article, the tax may be determined based on the retail price of such adult-use cannabis products.

§ 496-a. Returns to be secret. (a) Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, or any person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the content or any other information contained in any

return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the office of cannabis management, or the commissioner in an action or proceeding involving the collection of tax due under this chapter to which the state or the commissioner is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or in an action or proceeding related to the regulation or taxation of adult-use cannabis products on behalf of officers to whom information shall have been supplied as provided in this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report by or to a duly authorized officer or employee of the office of cannabis management; or by or to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by any person under this article; nor to prohibit the delivery to such person or a duly authorized representative of such person, a certified copy of any return or report filed by such person pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof. This section shall also not be construed to prohibit the disclosure, for tax administration purposes, to the division of the budget and the office of the state comptroller, of information aggregated from the returns filed by all persons subject to the taxes imposed by the article, whether the number of such persons is one or

more. Provided further that, notwithstanding the provisions of this subdivision, the commissioner may, in his or her discretion, permit the proper officer of any county entitled to receive any distribution of the monies received on account of the tax imposed by subdivision (c) of section four hundred ninety-three of this article, or the authorized representative of such officer, to inspect any return filed under this article, or may furnish to such officer or the officer's authorized representative an abstract of any such return or supply such officer or representative with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article.

(b) The commissioner, in his or her discretion, may permit the appropriate officers of any other state that regulates or taxes cannabis or the duly authorized representatives of any such officers, to inspect returns or reports made pursuant to this article, or may furnish to such other officers, or their duly authorized representatives, a copy of any such return or report or an abstract of the information therein contained, or any portion thereof, or may supply any such officers or such representatives with information relating to the business of a person making returns or reports hereunder solely for purposes of tax administration. The commissioner may refuse to supply information pursuant to this subdivision to the officers of any other state if the statutes of the state represented by such officers do not grant substantially similar privileges to the commissioner, but such refusal shall not be mandatory. Information shall not be supplied to the officers of any state that regulates or taxes cannabis, or their duly authorized representatives of any such officers, unless such officer or other representatives shall agree not to divulge or make known in any manner the information so supplied, but such officers may transmit such information to their employees or legal representatives when necessary, who in turn shall be subject to the same restrictions as those hereby imposed upon such officer or other representatives.

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

(2) For criminal penalties, see article thirty-seven of this chapter.

§ 496-b. Administrative provisions. (a) The provisions of part four of article twenty-eight of this chapter shall apply to the taxes imposed by section four hundred ninety-three of this article in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the tax imposed by this article, except to the extent that any provision of such article is either inconsistent with a provision of this article or is not relevant to this article.

(b)(1) All taxes, interest, and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that an amount equal to one hundred percent collected under this article less any amount determined by the commissioner to be reserved by the comptroller for refunds or reimbursements shall be paid by the comptroller to the credit of the cannabis revenue fund established by section ninety-nine-ii of the state finance law. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds. The commissioner is authorized and directed to deduct from the registration fees under subdivision (a) of section four hundred ninety-four of this article, before deposit into the cannabis revenue fund designated by the comptroller, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs incurred to administer, collect, and distribute the taxes imposed by this article.

(2) All taxes, interest, and penalties collected or received by the commissioner under subdivision (c) of section four hundred ninety-three of this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that an amount equal to one hundred percent collected under such subdivision (c), less any amount determined by the commissioner to be reserved by the comptroller for refunds or reimbursements, shall be paid to the comptroller and the commissioner shall certify to the comptroller the amount of tax, penalties, and interest attributable to retail sales within a city with a population of a million or more and

counties (other than a county wholly within such city). Such amount will be distributed by the comptroller to such city and such counties. Such counties shall be entitled to retain twenty-five percent of the monies so distributed. Such counties shall distribute the remaining seventy-five percent of such monies to the towns, villages, and cities within such county in which a retail dispensary is located in proportion to the sales of adult-use cannabis products by the retail dispensaries in such towns, villages and cities as reported by a seed-to-sale system, provided, however, where a retail dispensary is located in a village within a town that both permit cannabis retail sales, then the county shall distribute the monies attributable to such retail dispensary to such town and village in such proportion as may be agreed upon by the elective governing body of such town and of such village or, in the absence of such an agreement, shall evenly divide such monies between such town and village. Such counties shall distribute the monies received for each quarter ending on the last day of February, May, August or November to such towns, villages and cities no later than the thirtieth day after receipt of such monies from the comptroller.

§ 496-c. Additional penalties. (a) In addition to any other civil or criminal penalties that may apply, any person knowingly in possession of or knowingly having control over any type of illicit cannabis, as defined in section four hundred ninety-two of this article, after notice and an opportunity for a hearing, shall be liable for a civil penalty in an amount up to two times the amount of tax otherwise required to be paid for such product for a first violation, and for a second or subsequent violation within three years following a prior violation may be liable for a civil penalty in an amount up to three times the amount of tax otherwise required to be paid for such product.

(b) In addition to any other penalty authorized by this chapter or any other law:

(1) Any person who knowingly possesses for sale, as such term is defined in section four hundred ninety-two of this article, more than five pounds but less than twelve pounds of illicit cannabis or more than one pound but less than four pounds of illicit concentrated cannabis or illicit cannabis edible product, after notice and an opportunity for a

hearing, may be liable for a civil penalty of up to twenty-five thousand dollars for a first violation and may be liable for a civil penalty of up to fifty thousand dollars for a second or subsequent violation within three years following a prior violation.

(2) Any person who knowingly possesses for sale, as such term is defined in section four hundred ninety-two of this article, over twelve or more pounds of illicit cannabis or four or more pounds of illicit concentrated cannabis or illicit cannabis edible product, after notice and an opportunity for a hearing, may be liable for a civil penalty of up to seventy-five thousand dollars for a first violation and may be liable for a civil penalty of up to one hundred thousand dollars for a second or subsequent violation within three years following a prior violation.

(3) In addition to any penalty imposed pursuant to paragraphs one or two of this subdivision, any person who knowingly possesses for sale, as such term is defined in section four hundred ninety-two of this article, more than five pounds of illicit cannabis, or more than one pound of illicit concentrated cannabis or illicit cannabis edible product, in a commercial location, after notice and an opportunity for a hearing, may be subject to an additional civil penalty of up to fifty thousand dollars for a first violation and may be liable for a civil penalty of up to one hundred thousand dollars for a second or subsequent violation within three years following a prior violation. For purposes of this paragraph, "commercial location" means real property or a vehicle held out as open to the public or otherwise being used to conduct wholesale or retail transactions, including a storage area in or adjacent to such property or vehicle. Such term shall not include a residence or a personally-owned vehicle located at such residence.

(c) Any distributor on whom tax is imposed under this article that knowingly sells any adult-use cannabis product to any person who sells at retail adult-use cannabis products who is not registered under section four hundred ninety-four of this article, or whose registration has been suspended or revoked, may, after notice and an opportunity for a hearing, be liable for a civil penalty of up to fifty thousand dollars for a first violation and up to one hundred thousand dollars for a second or subsequent violation within three years following a prior violation.

(d) No enforcement action taken under this section shall be construed to limit any other criminal or civil liability of anyone in possession of illicit cannabis.

(e) The penalties imposed by this section shall not apply to natural persons lawfully in possession of adult-use cannabis or concentrated cannabis for personal use as provided in article two hundred twenty-two of the penal law.

§ 496-d. Enforcement. The commissioner or the commissioner's duly authorized representatives are hereby authorized:

(a) To conduct regulatory inspections during normal business hours of any place of business, including a vehicle used for such business, where adult-use cannabis products are distributed, placed, stored, sold or offered for sale. For the purposes of this section, "place of business" shall not include a residence or other real property, or any personal vehicle on or about such property, not held out as open to the public or otherwise being utilized in a business or commercial manner, unless probable cause exists to believe that such residence, real property or vehicle is being used in such a business or commercial manner for the buying or selling of adult-use cannabis products.

(b) To examine any adult-use cannabis products and the books, papers, invoices and other records of any place of business or vehicle where adult-use cannabis products are distributed, placed, stored, sold or offered for sale. Any person in possession, control or occupancy of any such business is required to give to the commissioner or the commissioner's duly authorized representatives or the duly authorized representatives of the office of cannabis management, the means, facilities, and opportunity for such examinations. For the purposes of this section, "place of business" shall not include a residence or other real property, or any personal vehicle on or about such property, not held out as open to the public or otherwise being utilized in a business or commercial manner, unless probable cause exists to believe that such residence, real property or vehicle is being used in such a business or commercial manner for the buying or selling of adult-use cannabis products.

(c) If any person registered under section four hundred ninety-four of

this article, or their agents, refuses to give the commissioner, or the commissioner's duly authorized representatives, the means, facilities and opportunity for the inspections and examinations required by this section, the commissioner, after notice and an opportunity for a hearing, may revoke their registration to distribute or sell adult-use cannabis products at retail:

(i) for a period of one year for the first such failure;

(ii) for a period of up to three years for a second such failure within a period of three years; and

(iii) for a period of up to seven years for a third such failure within five years.

(d) The commissioner or the commissioner's duly authorized representatives shall seize any illicit cannabis found in any place of business or vehicle where adult-use cannabis products are distributed, placed, stored, sold or offered for sale by any person who does not possess a certificate of registration as described in section four hundred ninety-four of this chapter.

(e) All illicit cannabis seized pursuant to the authority of this chapter or any other law of this state shall be turned over to the office of cannabis management or their authorized representative. Such seized illicit cannabis shall, after notice and an opportunity for a hearing, be forfeited to the state. If the office of cannabis management determines the illicit cannabis cannot be used for law enforcement purposes, it may, within a reasonable time after the forfeiture of such illicit cannabis, upon publication in the state registry, destroy such forfeited illicit cannabis.

§ 496-e. Notification of enforcement actions. The commissioner shall notify the cannabis control board and the office of cannabis management of the commencement of any enforcement actions taken under this article as well as the conclusion, outcomes, and the amount of penalties collected as a result of such actions.

ARTICLE 20-D
EXCISE TAX ON SALE OF OPIOIDS

Section 497. Definitions.

498. Imposition of excise tax.

499. Returns to be secret.

§ 497. Definitions. The following terms shall have the following meanings when used in this article.

(a) "Opioid" shall mean an "opiate" as defined by subdivision twenty-three of section thirty-three hundred two of the public health law and any natural, synthetic, or semisynthetic "narcotic drug" as defined by subdivision twenty-two of such section that has agonist, partial agonist, or agonist/antagonist morphine-like activities or effects similar to natural opium alkaloids, and any derivative, congener, or combination thereof listed in schedules II-V of section thirty-three hundred six of the public health law. The term "opioid" shall not mean buprenorphine, methadone, or morphine.

(b) "Unit" shall mean a single finished dosage form of an opioid, such as a pill, tablet, capsule, suppository, transdermal patch, buccal film, milliliter of liquid, milligram of topical preparation, or any other form.

(c) "Strength per unit" shall mean the amount of opioid in a unit, as measured by weight, volume, concentration or other metric.

(d) "Morphine milligram equivalent conversion factor" shall mean that reference standard of a particular opioid as it relates in potency to morphine as determined by the commissioner of health.

(e) "Morphine milligram equivalent" shall mean a unit multiplied by its strength per unit multiplied by the morphine milligram equivalent conversion factor.

(f) "Registrant" shall mean: (1) any person, firm, corporation or association that: (i) is required to be registered with the education department as a wholesaler, manufacturer, or outsourcing facility pursuant to section six thousand eight hundred eight or section six thousand eight hundred eight-b of the education law and (ii) holds and transfers title to an opioid unit; (2) any person, firm, corporation or association that: (i) would be required to be registered with the education department as a wholesaler, manufacturer, or outsourcing facility pursuant to such section six thousand eight hundred eight-b but

for the exception in subdivision two of such section and (ii) holds and transfers title to an opioid unit; or (3) any person, firm, corporation or association that: (i) is required to be registered with the health department as a manufacturer or distributor of a controlled substance pursuant to section thirty-three hundred ten of the public health law and (ii) holds and transfers title to an opioid unit.

(g) "Wholesale acquisition cost" shall mean the manufacturer's list price for an opioid unit to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

(h) "Sale" shall mean any transfer of title to an opioid unit for a consideration where actual or constructive possession of such opioid unit is transferred by a registrant holding title to such opioid unit to a purchaser or its designee in this state. A sale shall not include either the dispensing of an opioid unit pursuant to a prescription to an ultimate consumer or the transfer of title to an opioid unit from a manufacturer in this state to a purchaser outside this state when such opioid unit will be used or consumed outside this state.

§ 498. Imposition of excise tax. (a) There is hereby imposed an excise tax on the first sale of every opioid unit in the state at the following rates: (1) a quarter of a cent per morphine milligram equivalent where the wholesale acquisition cost is less than fifty cents, or (2) one and one-half cents per morphine milligram equivalent where the wholesale acquisition cost is fifty cents or more; except that such tax shall not apply when such first sale is to any program operated pursuant to article forty of the public health law and article thirty-two of the mental hygiene law. The tax imposed by this article shall be charged against and paid by the registrant making such first sale, and shall accrue at the time of such sale. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that any sale of an opioid unit in this state by a registrant is the first sale of such in the state until the contrary is established, and the burden of proving that any sale is not

the first sale in the state shall be upon the registrant.

(b) Every registrant liable for the tax imposed by this article shall file with the commissioner a return on forms to be prescribed by the commissioner showing the total morphine milligram equivalent and wholesale acquisition costs of such opioid units that are subject to the tax imposed by this article, the amount of tax due thereon, and such further information as the commissioner may require. Such returns shall be filed for quarterly periods ending on the last day of March, June, September and December of each year. Each return shall be filed within twenty days after the end of such quarterly period and shall cover all opioid sales in the state made in the prior quarter, except that the first return required to be filed pursuant to this section shall be due on January twentieth, two thousand twenty, and shall cover all opioid sales occurring in the period between the effective date of this article and December thirty-first, two thousand nineteen. Every registrant required to file a return under this section shall, at the time of filing such return, pay to the commissioner the total amount of tax due for the period covered by such return. If a return is not filed when due, the tax shall be due the day on which the return is required to be filed. The commissioner may require that the returns and payments required by this section be filed or paid electronically.

(c) Where a sale of an opioid unit by a registrant has been cancelled by the purchaser and tax thereon was previously paid by the registrant, the commissioner shall allow to the registrant a refund or credit of such tax on a return for a later period subject to the limitations period for claiming a refund or credit as prescribed by section one thousand eighty-seven of this chapter. Where a registrant proves that an opioid unit for which it previously paid a tax has been distributed out of the state for use or consumption outside this state, the commissioner shall allow a credit to the registrant for tax paid on a return for a later period subject to the limitations period for claiming a credit as prescribed by section one thousand eighty-seven of this chapter.

(d) All sales slips, invoices, receipts, or other statements or memoranda of sale from any sale or purchase of opioid units by registrants must be retained for a period of six years after the due date of the return to which they relate, unless the commissioner provides for a different retention period by rule or regulation. Such

records must be sufficient to determine the number of units transferred along with the morphine milligram equivalent of the units transferred, and otherwise be suitable to determine the correct amount of tax due. Such records must also record either (1) the address from which the units are shipped or delivered, along with the address to which the units are shipped or delivered, or (2) the place at which actual physical possession of the units is transferred. Such records shall be produced upon demand by the commissioner.

(e) The provisions of article twenty-seven of this chapter shall apply to the tax imposed by this article in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this article and had expressly referred to the tax imposed by this article, except to the extent that any provision of such article twenty-seven is either inconsistent with a provision of this article or is not relevant to this article.

(f) The commissioners of education and health shall cooperate with the commissioner in administering this tax, including sharing with the commissioner pertinent information about registrants upon the request of the commissioner.

(g) Each registrant shall provide a report to the department of health detailing all opioids sold by such registrant in the state of New York. Such report shall include:

(i) the registrant's name, address, phone number, federal Drug Enforcement Agency (DEA) registration number, education department registration number, and controlled substance license number issued by the department of health, if applicable;

(ii) the name, address and DEA registration number of the entity to whom the opioid was sold;

(iii) the date of the sale of the opioid;

(iv) the gross receipt total, in dollars, for each opioid sold;

(v) the name and National Drug Code of the opioid sold;

(vi) the number of containers and the strength and metric quantity of controlled substance in each container of the opioid sold;

(vii) the total number of morphine milligram equivalents sold; and

(viii) any other elements as deemed necessary by the commissioner of health.

Such information shall be reported annually in such form as defined by the commissioner of health and shall not be subject to the provisions of section four hundred ninety-nine of this article. With the exception of the information collected under paragraph (ii) of this subdivision, the department of health shall make the information collected in such reports available to the public in machine-readable formats and make it publicly available on the department of health's website annually.

§ 499. Returns to be secret. (a) Except in accordance with a proper judicial order or as otherwise provided for by law, it shall be unlawful for the commissioner, any officer or employee of the department, or any person engaged or retained by such department on an independent contract basis or any other person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the contents or any other information relating to the business of a registrant contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the state department of health, the state department of education or the commissioner in an action or proceeding under the provisions of this chapter or on behalf of the state or the commissioner in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article, or from providing any information contained in any such return or report, by or to a duly authorized officer or employee of the state department of

health or the state department of education; nor to prohibit the inspection or delivery of a certified copy of any return or report filed under this article, or the provision of any information contained therein, by or to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; nor to prohibit the commissioner from providing or certifying to the division of budget or the comptroller the total number of returns or reports filed under this article in any reporting period and the total collections received therefrom; nor to prohibit the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a registrant or other person under this article; nor to prohibit the delivery to a registrant, or a duly authorized representative of such registrant, a certified copy of any return or report filed by such registrant pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof.

(a-1) Cooperation with investigations by certain committees of the United States Congress. (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns or reports specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the

public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return or report, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return or report, and any social security numbers, account numbers and residential address information.

(2) No returns or reports shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns or reports have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal reports or returns or report or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns or reports are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

(b)(1) Any officer or employee of the state who willfully violates the

provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

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

ARTICLE 21 HIGHWAY USE TAX

- Section 501. Definitions.
- 502. Highway use registration.
 - 502-a. Certificate of registration and decal fees.
 - 503. Imposition of tax.
 - 503-a. Imposition of additional tax.
 - 503-b. Supplemental tax.
 - 504. Exemptions.
 - 505. Returns.
 - 506. Payment of tax.
 - 507. Records.
 - 508. Responsibility of owner.
 - 509. Powers of tax commission.
 - 510. Determination of tax.
 - 511. Proceedings to recover tax.
 - 512. Penalties and interest.
 - 512-a. Admissibility of weigh slips.
 - 513. Refunds.
 - 514. Secrecy of returns.
 - 514-a. Mailing rules; holidays.
 - 515. Disposition of revenues.

§ 501. Definitions. As used in this article: 1. "Person" shall include an individual, co-partner, limited liability company, society, association, corporation, joint stock company, lessee, and any combinations of individuals; an executor, administrator, receiver, trustee or other fiduciary.

2. (a) "Motor vehicle" shall include any automobile, truck, tractor or other self-propelled device, having a gross weight in excess of eighteen thousand pounds, or any truck having an unloaded weight in excess of eight thousand pounds, or any tractor, having an unloaded weight in excess of four thousand pounds, which is used upon the public highways otherwise than upon fixed rails or tracks.

(b) For purposes of section five hundred two of this article, in the case of an automotive fuel carrier, a "motor vehicle" shall, in addition to every motor vehicle defined in paragraph (a) of this subdivision, include any trailer, semi-trailer, dolly, or other device drawn thereby having a gross weight, alone, or in combination with any other motor vehicle, trailer, semi-trailer, dolly or other device, in excess of eighteen thousand pounds, which is used upon the public highways otherwise than upon fixed rails or tracks.

(c) "Motor vehicle" shall not include, however, a road roller, tractor crane, truck crane, power shovel, road building machine, snow plow, road sweeper, sand spreader or well driller; nor shall it include an omnibus except for purposes of the additional tax imposed by section five hundred three-a of this article.

3. "Vehicular unit" shall mean a motor vehicle alone or in combination with any other motor vehicle, trailer, semi-trailer, dolly, or other device drawn thereby.

4. "Gross weight" shall mean the unloaded weight of the motor vehicle plus the unloaded weight of the heaviest motor vehicle, trailer, semi-trailer, dolly or other device to be drawn by such motor vehicle (determined in a manner similar to the method for determining the unloaded weight of a motor vehicle) plus the weight of the maximum load, exclusive of the weight of the driver and his helper, to be carried or drawn by such motor vehicle.

5. "Carrier" shall include any person having the lawful use or control, or the right to the use or control of any vehicular unit in this state.

6. "Public highway" shall include any public highway, street, avenue,

road, public place, public driveway or any other public way; provided, however, that the term "public highway" as used in sections five hundred three and five hundred three-b of this article shall not include any portion of the thruway for which a fee, rental or charge for the use thereof, has been made by the thruway authority pursuant to the provisions of title nine of article two of the public authorities law.

7. "Unloaded weight" shall mean the actual weight of the motor vehicle, which includes all equipment necessary for the performance of the function of the vehicle as a vehicle, necessary for the safety of the vehicle, permanently attached to the vehicle, used exclusively for the protection of the load carried by the vehicle or used exclusively for the loading or unloading of the vehicle.

8. "Automotive fuel carrier" shall mean any carrier engaged in transporting automotive fuel.

9. "Automotive fuel carriers manifest" shall mean a detailed record of all automotive fuel transported by an automotive fuel carrier. Such manifest shall contain such information as prescribed by the tax commission pursuant to rules and regulations, and shall include the location, name, and any license, registration or permit identification numbers of any distributor, filling station or person from which such automotive fuel is transported and to which such automotive fuel is delivered. Such manifest shall include for each such location the total quantity of automotive fuel transported therefrom or delivered thereto and any taxes paid or collected thereon pursuant to or authorized pursuant to this chapter. The term "distributor" shall have the same meaning as it has for purposes of article twelve-A of this chapter, excluding persons who are not required pursuant to section two hundred eighty-two-a to pay the tax imposed thereby. The term "filling station" shall mean any place, location or station where automotive fuel is offered for sale to a purchaser of such fuel, to be delivered directly to a vehicle propelled by any power other than muscular.

10. "Automotive fuel" shall mean, solely for purposes of this article, diesel motor fuel as defined in subdivision fourteen of section two

hundred eighty-two of this chapter and motor fuel as defined in subdivision two of section two hundred eighty-two of this chapter.

§ 502. Highway use registration. 1. a. Each carrier shall apply to the commissioner for a certificate of registration for each motor vehicle operated or to be operated by such carrier on the public highways in this state. Application shall be made upon a form prescribed by such commissioner and shall set forth the gross and unloaded weight of each motor vehicle, license plate information for each motor vehicle and such other information as the commissioner may require. Such weights shall be subject to audit and approval by the commissioner. The commissioner shall issue a certificate of registration for each motor vehicle or a consolidated certificate of registration for all or any portion of such vehicles of such carrier which shall contain such information and be in such form as the commissioner shall prescribe. In the case of the loss, mutilation or destruction of a certificate of registration, the commissioner shall issue a duplicate thereof. Any such certificate of registration shall not be transferable, except as hereinafter provided, and shall be valid until revoked, suspended or surrendered. Such certificate of registration shall be maintained in the carrier's regular place of business. In the event of an increase in the gross or unloaded weight of any motor vehicle subject to this article, application for a corrected certificate of registration shall be made upon a form prescribed by such commissioner setting forth the previous gross or unloaded weight, the new gross or unloaded weight and such other information as the commissioner may require. In the event of a decrease in the gross or unloaded weight of any motor vehicle subject to this article, application may be made for a corrected certificate of registration in a similar manner, provided that any such application on the basis of a decrease in the gross or unloaded weight of any motor vehicle may be made only during the month of January. In the event of a decrease in the gross or unloaded weight of any motor vehicle subject to this article, an application to cancel a certificate of registration on the basis of such decrease may be made during any month. The corrected gross or unloaded weight shall be subject to audit and approval by the commissioner. In the event of a change to the license plate information

of any motor vehicle subject to this article, an application for a corrected certificate of registration shall be made upon a form prescribed by the commissioner setting forth the previous license plate information, the new license plate information and such other information as the commissioner may require. Upon surrendering the certificate of registration previously issued, the commissioner shall issue a corrected certificate of registration.

b. Every automotive fuel carrier shall apply to the commissioner for a special certificate of registration, in place of the certificate of registration described in paragraph a of this subdivision, for each motor vehicle operated or to be operated by such carrier on the public highways in this state to transport automotive fuel. Provided, however, a special certificate of registration shall not be required under this paragraph for a tractor or other self-propelled device which, except with respect to the fuel in the ordinary fuel tank intended for its propulsion, transports automotive fuel solely by means of a trailer, dolly or other device drawn by such tractor or other self-propelled device if a certificate of registration prescribed by paragraph a of this subdivision has been issued for the self-propelled device. Application shall be made upon an application form prescribed by the commissioner. The commissioner shall issue such special certificate of registration for each motor vehicle listed in the application or a consolidated certificate of registration for all or any portion of such vehicles of such carrier. All of the provisions of this article with respect to certificates of registration shall be applicable to the special certificates of registration issued to automotive fuel carriers under this paragraph as if those provisions had been set forth in full in this paragraph and expressly referred to the special certificates of registration required by this paragraph except to the extent that any such provision is either inconsistent with a provision of this paragraph or not relevant to the certificates of registration required by this paragraph. Any certificate of registration shall not be transferable, and shall be valid until revoked, suspended or surrendered. Such special certificate of registration shall be maintained in the carrier's regular place of business. Nothing contained in this paragraph shall in any way exempt an automotive fuel carrier from payment of the taxes imposed

pursuant to this article.

c. In lieu of the certificate of registration provided for in paragraph a of this subdivision, but not in place of any certificate of registration required by paragraph b of this subdivision, any carrier, except as hereinafter limited, may apply to the commissioner for a trip certificate of registration for any motor vehicle to be operated by him or her on the public highways of this state. Application for the trip certificate of registration shall be made on a form prescribed by the commissioner, shall set forth the license plate information for each such motor vehicle and such information as the commissioner shall require. The application shall be accompanied by a fee of twenty-five dollars for each motor vehicle. Each trip certificate of registration shall be valid for a period of seventy-two hours from the time of its issuance. The issuance of a trip certificate of registration for a motor vehicle shall exempt the carrier from the requirement of filing returns and payment of the taxes imposed by section five hundred three of this article on the operation of such motor vehicle for the effective period of the trip certificate of registration but no refund application may be filed on account of trip certificate of registration applications. Provided, however, that in order for any person liable for the tax to claim such exemption, such person must retain a copy of the trip certificate of registration in his records for the complete period of time required by section five hundred seven of this article. A carrier may not apply for more than ten trip certificates of registration during a single calendar year.

2. The commissioner, for cause, may deny a certificate of registration and suspend or revoke any certificate of registration issued by him or her, after an opportunity for a hearing has been afforded the carrier, provided, however, that a certificate of registration may be denied, suspended or revoked for failure to file a return as required by section five hundred five of this article or for nonpayment of any monies due under this article without a hearing. Such denial, suspension or revocation of a certificate of registration for any motor vehicle of any carrier shall automatically result in suspension or revocation of all certificates of registration issued to such carrier, unless otherwise

specified by the commissioner. A violation of any of the provisions of this article or of any rule or regulation of the commissioner promulgated under this article shall constitute sufficient cause for the denial, suspension or revocation of a certificate of registration. The nonpayment of any monies due for any other tax or imposition which is administered by the commissioner shall constitute sufficient cause for the denial of a certificate of registration. Any such action by the commissioner shall be reviewable under article seventy-eight of the civil practice law and rules.

3. If the certificate of registration of any motor vehicle has been suspended or revoked under this section the department of motor vehicles shall not thereafter reregister the motor vehicle or transfer the registration of ownership thereof upon the records of the department of motor vehicles until there is furnished to such department a certificate issued by the commissioner to the effect that such person has fully complied with the provisions of this article. The department of motor vehicles shall not reregister or transfer the registered ownership of any motor vehicle for which a certificate of registration has been issued under this article until there is furnished to it a certificate of tax clearance issued by the commissioner. Such certificate of tax clearance shall be issued after the payment of all monies due under this article or after the payment of any such amount is secured to the satisfaction of the commissioner.

4. Nothing herein contained shall be construed as authorizing motor vehicle weight limits in excess of those permitted by the vehicle and traffic law.

5. For purposes of this section, monies due shall be considered to be due if the monies have been assessed or finally determined to be due.

6. a. The commissioner may require the use of decals as evidence that a carrier has a valid certificate of registration for each motor vehicle operated or to be operated on the public highways of this state as required by paragraph a of subdivision one of this section. If the commissioner requires the use of decals, the commissioner shall issue

for each motor vehicle with a valid certificate of registration a decal that shall be of a size and design and containing such information as the commissioner prescribes. In the case of the loss, mutilation, or destruction of a decal, the commissioner shall issue a new decal upon proof of the facts. The decal shall be firmly and conspicuously affixed upon the motor vehicle for which it is issued as closely as practical to the registration or license plates and at all times be visible and legible. No decal is transferable. A decal shall be valid until it expires or is revoked, suspended, or surrendered.

b. The commissioner may require the use of special decals as evidence that an automotive fuel carrier has a valid special certificate of registration for each motor vehicle operated or to be operated on the public highways of this state to transport automotive fuel as required by paragraph b of subdivision one of this section. If the commissioner requires the use of special decals, the commissioner shall issue for each motor vehicle with a valid special certificate of registration a special decal that shall be distinctively colored and of a size and design and containing such information as the commissioner prescribes. In the case of the loss, mutilation, or destruction of a special decal, the commissioner shall issue a new special decal upon proof of the facts. The special decal shall be firmly and conspicuously affixed upon the motor vehicle for which it is issued pursuant to the rules and regulations prescribed by the commissioner to enable the easy identification of the automotive fuel carrier certificate of registration number and at all times be visible and legible. No special decal is transferable and shall be valid until it expires or is revoked, suspended, or surrendered.

c. The suspension or revocation of any certificate of registration issued under this article shall be deemed to include the suspension and revocation of any decal issued under this subdivision.

§ 502-a. Certificate of registration and decal fees. The application for a certificate of registration and decal described in paragraph a of subdivision one and paragraph a of subdivision six of section five

hundred two of this article, or a special certificate of registration and special decal as described in paragraph b of subdivision one and paragraph b of subdivision six of such section, shall be accompanied by a fee of one dollar and fifty cents. In the case of the loss, mutilation or destruction of any such documents, the commissioner shall issue a duplicate set thereof upon payment of a fee of one dollar and fifty cents. Provided, however, there shall be no additional charge for the issuance of a corrected certificate of registration pursuant to paragraph a of subdivision one of section five hundred two of this article.

§ 503. Imposition of tax. 1. In addition to any other tax or fee imposed by law, there is hereby levied and imposed a highway use tax for the privilege of operating any vehicular unit upon the public highways of this state and for the purpose of recompensing the state for the public expenditures incurred by reason of the operations of such vehicular units on the public highways of this state. Such tax shall be upon the carrier except that where the carrier is not the owner of such vehicular unit, the tax shall be a joint and several liability upon both. Such tax shall be based upon the gross weight of each motor vehicle and the number of miles it is operated on the public highways in this state except as hereinafter provided.

(a) The tax for each such motor vehicle shall be computed by multiplying the number of miles operated on the public highways in this state by the appropriate tax rate as it appears in the gross weight method table entitled "laden miles" set forth in paragraph (b) of this subdivision for the gross weight of the motor vehicle.

(b)

Gross Weight Method		
Laden Miles		
	Gross Weight of Vehicle	Tax Rate (in mills)
1.	18,001 to 20,000 inclusive	6.0
2.	20,001 to 22,000 inclusive	7.0
3.	22,001 to 24,000 inclusive	8.0
4.	24,001 to 26,000 inclusive	9.0

5.	26,001 to 28,000 inclusive	9.5
6.	28,001 to 30,000 inclusive	10.0
7.	30,001 to 32,000 inclusive	10.5
8.	32,001 to 34,000 inclusive	11.0
9.	34,001 to 36,000 inclusive	11.5
10.	36,001 to 38,000 inclusive	12.0
11.	38,001 to 40,000 inclusive	12.5
12.	40,001 to 42,000 inclusive	13.0
13.	42,001 to 44,000 inclusive	14.0
14.	44,001 to 46,000 inclusive	15.0
15.	46,001 to 48,000 inclusive	16.0
16.	48,001 to 50,000 inclusive	17.0
17.	50,001 to 52,000 inclusive	18.0
18.	52,001 to 54,000 inclusive	19.0
19.	54,001 to 56,000 inclusive	20.0
20.	56,001 to 58,000 inclusive	21.0
21.	58,001 to 60,000 inclusive	22.0
22.	60,001 to 62,000 inclusive	23.0
23.	62,001 to 64,000 inclusive	24.0
24.	64,001 to 66,000 inclusive	25.5
25.	66,001 to 68,000 inclusive	27.0
26.	68,001 to 70,000 inclusive	28.5
27.	70,001 to 72,000 inclusive	30.0
28.	72,001 to 74,000 inclusive	32.5
29.	74,001 to 76,000 inclusive	35.0
30.	76,001 and over	add two mills per ton and fraction thereof

(c) Provided, however, when a motor vehicle is operated without any load or cargo, either alone or when it is drawing an unloaded trailer, semi-trailer, dolly or other device, the carrier shall in lieu of computing the tax by the gross weight method table entitled "laden miles" compute the tax by multiplying the number of miles operated under such conditions by the appropriate tax rate entitled "unladen miles" for tractors set forth in this paragraph, if the vehicular unit is propelled by a tractor, and by the appropriate tax rate entitled "unladen miles" for trucks set forth in this paragraph, if the vehicular unit is propelled by a truck. Such tax rate shall be determined by the unloaded

weight of the tractor if the motor vehicle is a tractor and, in all other cases, by the combined unloaded weight of any such motor vehicle plus the unloaded weight of the heaviest trailer, semi-trailer, dolly or other device to be drawn by such motor vehicle (determined in a manner similar to the methods for determining the unloaded weight of a motor vehicle) when the motor vehicle is operated under such conditions. Provided further, however, when an unloaded tractor is being operated alone, the carrier shall compute the tax by multiplying the mileage operated under such conditions by the appropriate tax rate for trucks set forth in this paragraph determined at the unloaded weight of the tractor.

Gross Weight Method
Unladen Miles
Tractors

Unloaded Weight		Tax Rate (in mills)
1.	7,001 to 8,500 inclusive	6.0
2.	8,501 to 10,000 inclusive	7.0
3.	10,001 to 12,000 inclusive	8.0
4.	12,001 to 14,000 inclusive	9.0
5.	14,001 to 16,000 inclusive	9.5
6.	16,001 to 18,000 inclusive	10.0
7.	18,001 and over	add five tenths of a mill per ton and fraction thereof

Trucks

Unloaded Weight		Tax Rate (in mills)
1.	18,001 to 20,000 inclusive	6.0
2.	20,001 to 22,000 inclusive	7.0
3.	22,001 to 24,000 inclusive	8.0
4.	24,001 to 26,000 inclusive	9.0
5.	26,001 to 28,000 inclusive	9.5
6.	28,001 to 30,000 inclusive	10.0
7.	30,001 and over	add five tenths of a mill per ton and fraction thereof

(d) Provided, however, for purposes of determining the applicable rates of tax under this subdivision, for those miles when a truck does not draw a trailer, semi-trailer, dolly or other device, the gross weight and unloaded weight of the truck shall be determined without regard to the weight of any trailer, semi-trailer, dolly or other device drawn at other times by the truck or the weight of any load carried by any such trailer, semi-trailer, dolly or other device.

2. In lieu of basing the tax on the gross weight and mileage of each vehicular unit consisting of a combination of motor vehicle and trailer operated as a unit, any carrier operating more than one such vehicular unit may elect in his return to base the tax on (i) the gross weight of its heaviest laden motor vehicle and the number of laden miles all of its motor vehicles are operated on the public highways of this state under such condition by the tax rate entitled "laden miles" set forth in paragraph (b) of subdivision one of this section plus (ii) the unloaded weight of its heaviest unladen tractor, if the vehicular unit is propelled by a tractor and in all other cases, by the combined unloaded weight of the motor vehicle plus the unloaded weight of the heaviest trailer, semi-trailer, dolly or other device to be drawn by such motor vehicle (determined in a manner similar to the method for determining the unloaded weight of a motor vehicle) and the number of unladen miles all of its motor vehicles are operated on the public highways of this state under such conditions by the tax rate entitled "unladen miles" set forth in paragraph (c) of subdivision one of this section for the tractor or truck, as the case may be. Provided, however, when an unloaded tractor is being operated alone, the carrier in lieu of the computation required by clause (ii) of this subdivision for such mileage shall compute the tax for the mileage operated under such conditions by multiplying the appropriate tax rate for trucks set forth in such paragraph determined at the unloaded weight of the tractor. Such election may be made with respect to each return filed by a carrier and shall apply to all such motor vehicles required to be included in a return of the carrier during the taxable period covered thereby. Such election shall be irrevocable with respect to the taxable period for which the return is filed.

3. In lieu of computing the tax on the basis provided in the preceding subdivisions, any carrier may elect to compute the tax on the basis of the unloaded weight of each motor vehicle and the number of miles it is operated on the public highways in this state. The tax computed for each such motor vehicle shall be computed by multiplying the number of miles operated on the public highways in this state by the appropriate tax rate in the following tables:

	Unloaded Weight of Truck	Tax Rate (in mills)
1.	8,001 to 9,000 inclusive	4
2.	9,001 to 10,000 inclusive	5
3.	10,001 to 11,000 inclusive	7
4.	11,001 to 12,000 inclusive	8
5.	12,001 to 13,000 inclusive	9
6.	13,001 to 14,000 inclusive	10
7.	14,001 to 15,000 inclusive	11
8.	15,001 to 17,500 inclusive	12
9.	17,501 to 20,000 inclusive	14
10.	20,001 to 22,500 inclusive	18
11.	22,501 to 25,000 inclusive	22
12.	25,001 and over	27
	Unloaded Weight of Tractor	
1.	4,001 to 5,500 inclusive	6
2.	5,501 to 7,000 inclusive	10
3.	7,001 to 8,500 inclusive	14
4.	8,501 to 10,000 inclusive	18
5.	10,001 to 12,000 inclusive	25
6.	12,001 and over	33

Such election may be made by the carrier only on the first return required to be filed by him in any calendar year and shall apply to all motor vehicles required to be included therein. Such election shall be irrevocable with respect to the taxable period for which such return is filed and all subsequent returns covering operations during any part of the calendar year in which such election is made.

§ 503-a. Imposition of additional tax. 1. In addition to the tax

imposed by section five hundred three of this chapter, and in addition to any other tax or fee imposed by law, there is hereby imposed on and after July first, nineteen hundred sixty-eight and before January first, nineteen hundred ninety-six an additional tax on highway use for the privilege of operating any vehicular unit, other than an omnibus, upon the public highways of this state, and on and after October first, nineteen hundred sixty-nine and before January first, nineteen hundred ninety-six an additional tax on highway use for the privilege of operating upon the public highways of this state any omnibus which is a vehicular unit as defined in subdivision eight of this section. Such tax shall be upon the carrier except that where the carrier is not the owner of such vehicular unit, the tax shall be a joint and several liability upon both.

2. Such tax shall be at a composite rate determined by adding together (i) a fuel tax component which shall be equivalent to the rate per gallon in effect under the taxes on motor fuel and diesel motor fuel imposed by article twelve-a of this chapter and (ii) a sales tax component, which shall be equivalent to the rate per gallon applicable to the receipts from the sale of a gallon of motor fuel and diesel motor fuel in effect under the sales and compensating use taxes imposed by sections eleven hundred five and eleven hundred ten of this chapter plus the highest rate applicable to the receipts from the sale of a gallon of motor fuel and diesel motor fuel in effect in any locality of this state imposing a local sales and compensating use tax on the sale of motor fuel and diesel motor fuel under the authority of section twelve hundred ten of this chapter; provided, however, that the aggregate rate per gallon applicable to the receipts from the sale of a gallon of such fuels imposed under clause (ii) of this subdivision shall not exceed seven percent. Such total equivalent rate per gallon under clause (ii) of this subdivision shall be determined as provided in subdivision (d) of section eleven hundred eleven of this chapter and the schedules prescribed by the commissioner of taxation and finance pursuant to such subdivision, and shall be based on the average price per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels but determined without the inclusion of any state and local sales tax on receipts from

sales of such fuels) paid by the carrier during the return period for all motor fuel and diesel motor fuel purchased for use in its operations either within or without this state. Provided, however, if the commissioner shall determine that the records of any carrier are inadequate or incomplete for such a determination of average price, the price for motor fuel and diesel motor fuel purchased by such carrier shall be deemed to be the prevailing price for motor fuel and diesel motor fuel, as established by the commissioner each calendar quarter pursuant to this section, applicable to the return period. Each calendar quarter, the commissioner shall for each calendar quarter establish a prevailing price for motor fuel and diesel motor fuel based on the prices being charged on any given day during the first fifteen days of the previous calendar quarter at a minimum of ten selected truck stops widely scattered throughout the state. For any return period, a carrier may elect to use the prevailing price per gallon so established by the commissioner. Such tax shall be computed by multiplying such composite rate by the amount of motor fuel or diesel motor fuel, as the case may be, used by a carrier in its operations within this state during each calendar quarter or, where the commissioner has required or permitted a return to be based upon a different period, during such other period. The amount of motor fuel and diesel motor fuel used in the operations of any carrier within this state shall be such proportion of the total amount of such motor fuel and diesel motor fuel used in its entire operations within and without this state as the total number of miles traveled within this state bears to the total number of miles traveled within and without this state. The commissioner may, by regulation, allow use of a miles per gallon factor in computing fuel used in operations in lieu of the above formula if evidence is presented to the commissioner's satisfaction that no loss of revenue will result. Where the records of any carrier are inadequate or incomplete the vehicular units of a carrier filing returns shall be deemed to have consumed, on the average, one gallon of diesel motor fuel for every four miles traveled or one gallon of motor fuel for every three miles traveled unless substantial evidence discloses that a different amount was consumed.

3. Every carrier subject to the tax imposed by this section shall be

entitled to a credit against such tax determined by adding together the following components: (i) a fuel tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel purchased by such carrier within this state in a return period, for use in its operations either within or without this state, by the applicable rate per gallon imposed on such fuel under article twelve-A of this chapter, provided, however, no credit shall be allowed unless the tax imposed under such article twelve-A upon such purchase of fuel has been paid by such carrier, and (ii) a sales tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel purchased by such carrier within this state in a return period, for use in its operations either within or without this state (as determined in a manner similar to the method for determining the use of fuel in the state as provided for under subdivision two of this section), by the applicable equivalent rate per gallon of the sales tax component of the tax rate (as determined under subdivision two of this section), provided, however, no credit shall be allowed unless the tax imposed under article twenty-eight of this chapter upon such purchase of fuel has been paid by the carrier. Each carrier claiming such credit components shall furnish to the commissioner such evidence of payment of such taxes as the commissioner may require. When the amount of the credit to which any carrier is entitled for any return period with respect to gallonage purchased in such return period exceeds the amount of tax for which such carrier is liable under this section for such return period, such excess shall be allowed as a credit against the tax or which such carrier would otherwise be liable for those succeeding periods (after application of any credits derived with respect to gallonage purchased in each such succeeding period) which fall wholly within the twenty-four month period commencing with the end of the return period from which the excess was derived or, if a claim for refund is filed on or before the last day of the month immediately following the forty-eight month period commencing with the end of the return period which gave rise to the refund, the amount of such excess for such period shall be refunded; but, such a claim for refund may be filed no more frequently than quarterly, with respect to the calendar quarters: January through March, April through June, July through September and October through December. The commissioner shall grant or deny any such claim for refund in whole or

in part and shall notify the claimant by mail of the commissioner's determination. Such determination shall be final and irrevocable unless the claimant shall, within thirty days after the mailing of notice of such determination, petition the division of tax appeals for a hearing. After such hearing, the division of tax appeals shall mail notice of the determination of the administrative law judge to the claimant and to the commissioner. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter. However, such a proceeding may not be commenced unless an undertaking is filed with the commissioner in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if the proceeding be dismissed or the decision confirmed, the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding.

4. Except as otherwise provided in this subdivision, every carrier subject to the tax imposed by this section shall file returns reporting its operations pursuant to the provisions of section five hundred five of this article for the reporting periods provided pursuant thereto. If the commissioner of taxation and finance finds that the enforcement of the tax imposed by this section would not be adversely affected, the commissioner may provide, by regulation, that a carrier operating primarily within this state may file an information return, rather than the aforementioned returns, provided the carrier has purchased in this state all the motor fuel and diesel motor fuel used in its operations during the period covered by such return and pays the taxes imposed under articles twelve-a and twenty-eight and pursuant to the authority of article twenty-nine of this chapter on such fuels in the manner required by such articles. An election to file an information return shall be made in such form, for such time and upon such terms as the commissioner shall require.

5. At the time of filing its return, as required pursuant to the preceding subdivision, each carrier shall pay the tax imposed by this section calculated upon the amount of motor fuel and Diesel motor fuel used in its operations within this state during the period covered by

the return filed.

6. For purposes of this section, the definition of "motor fuel" in subdivision two of section two hundred eighty-two and the definition of "Diesel motor fuel" in subdivision fourteen of section two hundred eighty-two of this chapter shall apply.

7. For purposes of this section, the term "operations" means operations of all vehicular units, whether loaded or empty, whether or not for compensation and whether owned by or leased to the carrier which operates them or causes them to be operated.

8. For purposes of this section only, (a) the term "vehicular unit" shall include an omnibus engaged in the interstate or foreign transportation of passengers and subject to the jurisdiction of the interstate commerce commission, or any agency successor thereto, or one or more state regulatory agencies concerned with the regulation of passenger transport, having a seating capacity of more than seven persons in addition to the driver; and (b) the term "carrier" shall include any person having the lawful use or control, or the right to the use or control of any such omnibus.

9. The rest of the provisions of this article shall be applicable to the tax imposed by this section except to the extent such provisions are inconsistent with a provision in this section.

§ 503-b. Supplemental tax. 1. In addition to the taxes imposed by sections five hundred three and five hundred three-a of this article, and in addition to any other tax or fee imposed by law, there is hereby imposed on and after July first, nineteen hundred ninety a supplemental tax, for the privilege of operating any vehicular unit upon the public highways of this state and the purpose of recompensing the state for the public expenditures incurred by reason of the operations of such vehicular units on the public highways of this state, equal to the tax imposed by section five hundred three of this article.

2. The provisions concerning returns under section five hundred five of this article shall be applicable to this section. The supplemental tax imposed by this section shall be payable to the commissioner of taxation and finance in full at the time the return is required to be filed.

3. Except as otherwise provided in this section, all of the provisions of this article applicable to the tax imposed by section five hundred three of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by such section five hundred three, insofar as such provisions can be made applicable to the supplemental tax imposed by this section, with such modification as may be necessary to adapt such provisions to the supplemental tax imposed by this section.

4. The provisions of this section shall not apply to (i) any vehicular unit used almost exclusively to transport boltwood, logs, pulpwood or woodchips, and (ii) any vehicular unit used almost exclusively to transport raw, unprocessed milk in bulk, provided, however, the provisions of clauses (i) and (ii) of this subdivision shall not apply to any carrier or owner which operates more than three such vehicular units.

5. Notwithstanding any other provision of this article, commencing January first, nineteen hundred ninety-nine and ending March thirty-first, two thousand one, the supplemental tax imposed on the privilege of operating any motor vehicle unit shall be fifty percent of the tax imposed by section five hundred three of this article and commencing April first, two thousand one, the supplemental tax imposed on the privilege of operating any motor vehicle unit shall be forty percent of the tax imposed by section five hundred three of this article.

§ 504. Exemptions. The provisions of this article shall not apply to any vehicular unit:

1. Operating over a rural route and engaged exclusively in the transportation of United States mail under contract.

2. Owned and operated by the United States, the state or any other state or any county, city, town or municipality in this state, or any other state or by any agency or department thereof.

3. (a) Operated by a farmer or by a person that bears the relationship to such farmer described in paragraph (b) of this subdivision and used exclusively by such farmer or such person in transporting such farmer's own agricultural commodities and products, pulpwood or livestock, including the packed, processed, or manufactured products thereof, that were originally grown or raised on such farmer's farm, lands or orchard, or when used to transport supplies and equipment to such farmer's farm or orchard that are consumed and used thereon or when operated by such farmer or such person in transporting farm products from a farm contiguous to such farmer's farm.

(b) The relationship to such farmer as referenced in paragraph (a) of this subdivision, shall include:

(i) members of a family, including spouses, ancestors, lineal descendants, brothers and sisters (whether by the whole or half blood), and entities related to such a family member as described in subparagraphs (ii) through (iv) of this paragraph;

(ii) a shareholder and a corporation more than fifty percent of the value of the outstanding stock of which is owned or controlled directly or indirectly by such shareholder;

(iii) a partner and a partnership more than fifty percent of the capital or profits interest in which is owned or controlled directly or indirectly by such partner;

(iv) a beneficiary and a trust more than fifty percent of the beneficial interest in which is owned or controlled directly or indirectly by such beneficiary;

(v) two or more corporations, partnerships, associations, or trusts, or any combination thereof, which are owned or controlled, either directly or indirectly, by the same person, corporation or other entity, or interests; and

(vi) a grantor of a trust and such trust.

4. Where the motor vehicle has a gross weight of eighteen thousand pounds or less until such time as an election applicable to such motor vehicle is filed to compute the tax under the method provided in subdivision three of section five hundred three of this chapter.

5. Used exclusively in the transportation of household goods (as defined by the commissioner of transportation of this state or the interstate commerce commission) by a carrier under authority of the commissioner of transportation of this state or of the interstate commerce commission.

6. Owned and operated by any fire company or fire department as defined in section three of the volunteer firefighters' benefit law.

§ 505. Returns. Every carrier subject to this article and every carrier to whom a certificate of registration was issued shall file on or before the last day of each month a return for the preceding calendar month where a carrier's total tax liability under this article for the preceding calendar year exceeded twelve thousand dollars. Where a carrier's total tax liability under this article for the preceding calendar year did not exceed twelve thousand dollars or where a carrier was not subject to such tax in the preceding calendar year, returns shall be filed quarterly, on or before the last day of the calendar month following each of the calendar quarters: January through March, April through June, July through September and October through December. Provided, however, if the commissioner consents thereto in writing, any carrier may file a return on or before the thirtieth day after the close of any different period, if the carrier's books are regularly kept on a periodic basis other than a calendar month or quarter. The commissioner may permit the filing of returns on an annual basis, provided the carrier was subject to the tax under this article during the entire preceding calendar year and the carrier's total tax liability under this article for such year did not exceed twelve hundred dollars. Such annual returns shall be filed on or before January thirty-first of the succeeding calendar year. Returns shall be filed with the commissioner

on forms to be furnished by such commissioner for such purpose and shall contain such data, information or matter as the commissioner may require to be included therein. The fact that a carrier's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such carrier. The commissioner may grant a reasonable extension of time for filing returns whenever good cause exists and may waive the filing of returns if a carrier is not subject to the tax imposed by this article for the period covered by the return. Every return shall have annexed thereto a certification to the effect that the statements contained therein are true.

§ 506. Payment of tax. 1. At the time of filing a return, as required by this article, each carrier shall pay to the tax commission the tax imposed by this article for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed. The tax commission may grant a reasonable extension of time for paying the tax whenever good cause exists.

2. The fees, taxes, penalties and interest accruing under this article shall constitute a lien upon all motor vehicles and vehicular units which are owned by such carrier or of which he has the lawful use or control. The lien shall attach at the time of operation of any such motor vehicle or vehicular unit within this state and shall remain effective until the fees, taxes, penalties and interest are paid, or the motor vehicle or vehicular unit is sold for the payment thereof. Such liens shall be paramount to all prior liens or encumbrances of any character and to the rights of any holder of the legal title in or to any such motor vehicle or vehicular unit, provided, however, that:

a. No lien for any additional tax assessed pursuant to this article shall be enforceable against any motor vehicle or vehicular unit which prior to such assessment had been transferred in good faith to a bona fide transferee for value.

b. The lien of such tax shall be subject to the lien of any

indebtedness secured by a chattel mortgage or conditional sales agreement existing against such motor vehicle or vehicular unit previous to the time when such tax became a lien, if:

(1) Such indebtedness was incurred in good faith to secure a portion of the purchase price of such motor vehicle or vehicular unit, and

(2) Such indebtedness is secured by a chattel mortgage or conditional sales agreement duly filed as required by law, and

(3) Such chattel mortgage or conditional sales agreement was not given, directly or indirectly, to any officer or stockholder of the corporation owning or having the lawful use or control of such motor vehicle or vehicular unit, whether as a purchase money mortgage or otherwise.

The lien of such tax shall be enforceable, however, as to any equity after the encumbrance of such chattel mortgage or conditional sales agreement. In the event a motor vehicle or vehicular unit subject to such tax lien is repossessed by a chattel mortgagee or a conditional vendor such motor vehicle or vehicular unit shall not be sold at public or private sale unless at least five days notice of the time and place of such sale is served by registered mail upon the tax commission in Albany.

§ 507. Records. Every carrier subject to this article and every carrier to whom a certificate of registration was issued shall keep a complete and accurate daily record which shall show the miles traveled in this state by each vehicular unit and such other information as the commissioner may require. Such records shall be kept in this state unless the commissioner consents to their removal and shall be preserved for a period of four years and be open for inspection at any reasonable time upon the demand of the commissioner.

§ 508. Responsibility of owner. In those instances where the carrier is not the owner of the vehicular unit, the owner may file the return and maintain the record required by section five hundred five and five hundred seven, and shall be jointly and severally liable with the

carrier for the payment of tax required under section five hundred six.

§ 509. Powers of tax commission. In addition to any other power conferred by this chapter the tax commission shall have the following powers:

1. To prescribe such methods and means as the commission determines to be necessary for checking, verifying and ascertaining the number of miles traveled by, and the weight of, each vehicular unit on the public highways in this state;

2. To prescribe the method of accounts and the type of records to be kept by any carrier to the extent necessary to determine liability under this article;

3. To weigh at reasonably frequent intervals any vehicular unit or any motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, having a gross weight in excess of sixteen thousand pounds, operating on the public highways in this state;

4. To require any carrier subject to tax hereunder to file, with the department of taxation and finance, a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to the tax commission, in such amount as the tax commission may fix, to secure the payment of any monies which may become due from such carrier pursuant to this article. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the comptroller and the commissioner of taxation and finance and may be sold by the tax commission if it becomes necessary so to do in order to recover any sums due from such carrier pursuant to this article; but no such sale shall be had until after such carrier shall have had an opportunity to litigate the validity of any tax if it elects so to do. Upon such sale the surplus, if any, above the sums due under this article shall be returned to said carrier. The amount of the bond or other security required hereunder shall be

reasonably related to the probable liability of the carrier under this article;

5. To request the division of state police, the state department of transportation and other public officials to cooperate in enforcing the provisions of this article;

5-a. To take possession of any certificate of registration which has been suspended or revoked under the provisions of this article and any decal issued in conjunction therewith, and any certificate of registration which is being used for a motor vehicle other than the one for which it was issued and any decal that is on a motor vehicle other than the one for which it was issued, or to direct any peace officer, acting pursuant to his or her special duties, or any police officer or any employee of the department to take possession thereof and return the same to the commissioner.

6. To release any property from the lien of any fees, taxes, penalties or interest imposed by this article upon application made to it and the payment of a fee of one dollar provided payment be made of such a sum as the commission shall deem adequate consideration for such release or after payment of any such amount is secured to the satisfaction of the commission;

7. To make reasonable rules and regulations to effectuate the purposes of this article.

8. To issue replacement certificates of registration or decals at such times as the commissioner may deem necessary for the proper and efficient enforcement of the provisions of this article, but not more often than once every year and to require the surrender of the then outstanding certificates of registration and decals. All of the provisions of this article with respect to certificates of registration and decals shall be applicable to replacement certificates of registration and decals issued hereunder, except that the replacement certificate of registration or decal shall be issued upon payment of a fee of one dollar and fifty cents for each motor vehicle and for any

trailer, semi-trailer, dolly or other device drawn thereby for which a certificate of registration or decal is required to be issued under this article;

9. To examine, or cause to be examined or cause any person to keep any books, papers or records with respect to the operations on the public highways of this state of any vehicular unit or any motor vehicle, if the tax commission has reasonable grounds to believe that such vehicle may be subject to the provisions of this article or employed in the computation of the taxes imposed by this article, to require the attendance of any person having knowledge thereof and to take testimony and require proof under oath material for its information, for the purpose of ascertaining the correctness of any return filed with respect thereto or for the purpose of determining tax liability under this article;

10. To waive the liability imposed by, or any requirement of, this article, or both, under such conditions and limitations as the commissioner may prescribe, as the commissioner may deem necessary to facilitate prompt relief to an area determined by the president of the United States to warrant assistance by the federal government under the disaster relief and emergency assistance act.

§ 510. Determination of tax. 1. In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the commissioner, or if no return is made for any period, the commissioner shall determine the amount of tax due from such information as is available to the commissioner. Such determination shall be made within four years from the time the return was filed or, if no return was filed or in the case of a willfully false or fraudulent return with intent to evade the tax, such determination may be made at any time. Notwithstanding any of the foregoing provisions of this section, where, before the expiration of the time prescribed in this section for the determination of tax, both the commissioner and the taxpayer have consented in writing to its determination after such time, the tax may be determined at any time prior to the expiration of the period agreed

upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The commissioner shall give notice of such determination to the person liable for such tax. Such determination shall finally and conclusively fix such tax, unless the person against whom it is assessed shall, within ninety days after the giving of notice of such determination, petition the division of tax appeals for a hearing, or unless the commissioner of his own motion shall redetermine the same. After such hearing, the division of tax appeals shall give notice of the determination of the administrative law judge to the person liable for the tax and to the commissioner. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter. The proceeding may not be commenced unless the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner and an undertaking filed with him, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that, if such proceeding be dismissed or the decision of the tax appeals tribunal confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding, or, at the option of the petitioner, such undertaking may be in a sum sufficient to cover the tax, penalties, interest, costs and charges aforesaid, in which event the petitioner shall not be required to pay such tax, penalties and interest as a condition precedent to the commencement of the proceeding.

2. The remedy provided by subdivision one of this section for review of a decision of the tax appeals tribunal shall be the exclusive remedy available to judicially determine the liability of any person for taxes under this article.

3. Any notice authorized or required under this article may be given by mailing the same to the person for whom it is intended, in a postpaid envelope, addressed to such person at the address given by him in the application for a certificate of registration or in the last return filed by him under this article, or, if no application or return has

been filed then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of same by the person to whom addressed. Any period of time, which is determined according to the provisions of this article, for the giving of notice shall commence to run from the date of mailing of such notice.

§ 511. Proceedings to recover tax. 1. Whenever any person shall fail to pay, within the time limited herein, any tax, interest or penalties which he is required to pay under the provisions of this article, the attorney general shall, upon the request of the department of taxation and finance, enforce payment of such tax, interest or penalties by civil action, in the name of the people of the state, against such person for the amount of such tax, interest or penalties. The proceeds of the judgment, if any, shall be paid to the department of taxation and finance.

2. Whenever any person shall fail to pay, within the time limited herein, any tax which he is required to pay under the provisions of this article, the tax commission may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such person, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the department of taxation and finance and to pay to it the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the person mentioned in the warrant, and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. Such lien shall not apply to personal property unless such warrant is also filed in the department of state. The said sheriff shall thereupon proceed upon the warrant in all respects, with like effect, and in the same

manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the tax commission shall have the same remedies to enforce the claim for taxes, penalties and interest against any person as if the people of the state had recovered judgment against such person for the amount of the tax.

3. Whenever any person is delinquent in the payment of any amount due under this article the commission may forthwith collect such amount from such person by seizing any motor vehicle or vehicular unit subject to the lien of the tax, which is owned by him or of which he has the lawful use or control and may thereafter sell it at public auction in the county in which it was seized to pay the fees, taxes, interest and penalties and any costs incurred on account of the seizure and sale, after giving ten days' notice of the sale in writing to such person and, where such person is not the owner of such motor vehicle or vehicular unit, to the owner thereof provided that he has filed with the tax commission a statement of his ownership of the motor vehicle or vehicular unit subject to the lien. Public notice of the time and place of the sale of the property to be sold shall be given by posting same in at least six public places in the county where the sale is to be made, at least six days prior thereto. A copy of such notice shall be filed at least six days prior to the sale in an office of the department of taxation and finance in Albany to be designated by the tax commission, and shall be available for public inspection. The proceeds of such sale shall be paid into the state treasury to the credit of the general fund provided, however, any excess received upon the sale over the amount of the fees, taxes, interest and penalties and any costs incurred on account of the seizure and sale shall be refunded to such person or owner.

4. In addition to the foregoing proceedings, in case of default of any person to pay, within the time limited herein, any fees, taxes, penalties or interest which he is required to pay under the provisions of this article or to file a bond, other security or a return as required by this article or by the tax commission, the tax commission may forward a written statement of the facts showing such default to the department of motor vehicles which shall suspend all registration plates of all motor vehicles, trailers, semi-trailers, dollies or other devices of such person on account of such default, which suspension shall be terminated if the commission certifies that such persons have paid or secured the above amounts, or filed the required bond or other security.

5. The operation by a nonresident of a vehicular unit in this state or the operation in this state of a motor vehicle, trailer, semi-trailer, dolly or other device owned by a nonresident shall be deemed equivalent to an appointment by such nonresident of the secretary of state to be his true and lawful attorney upon whom may be served the process in any action or proceeding against him growing out of any liability for fees, taxes, penalties or interest under this article and such operation shall be deemed a signification of his agreement that any such process against him which is so served shall be of the same legal force and validity as if served on him personally within the state and within the territorial jurisdiction of the court from which the process issues. Service of process shall be made by either (1) personally delivering to and leaving with the secretary of state or a deputy secretary of state duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail one of such copies to the person at the address designated by him in his application for a certificate of registration under this article or in the last return filed by him under this article or as shown on the records of the commissioner, or if no application has been filed, at his last known office address within or without the state, or (2) personally delivering to and leaving with the secretary of state or a deputy secretary of state a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to the person, personally without the state. Proof of such

personal service without the state shall be filed with the clerk of the court in which the process is pending within thirty days after such service and such service shall be complete ten days after proof thereof is filed.

§ 512. Penalties and interest. 1. (a) Any person failing to file a return or to pay any tax within the time required by or pursuant to this article (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of ten per centum of the amount of tax determined to be due as provided in this article plus one per centum of such amount for each month or fraction thereof during which such failure continues after the expiration of the first month after such return was required to be filed or such tax became due, not exceeding thirty per centum in the aggregate. Provided, however, that any person who fails to file any return required by this article within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing) shall be subject to a penalty which shall not be less than the lesser of one hundred dollars or one hundred per centum of the amount required to be shown as tax on such return. For the purpose of the preceding sentence, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) If any amount of tax is not paid on or before the last date prescribed in this article for payment, interest on such amount at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

(c) If the tax commission determines that such failure or delay was due to reasonable cause and not due to willful neglect, it shall remit all or part of such penalty. The tax commission shall promulgate rules and regulations as to what constitutes reasonable cause.

(d) If the failure to pay any tax within the time required by or pursuant to this article is due to fraud, in lieu of the penalties and interest provided for in paragraphs (a) and (b) of this subdivision, there shall be added to the tax (i) a penalty of two times the amount of tax due, plus (ii) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter for the period beginning on the last day prescribed by this article for the payment of such tax (determined without regard to any extension of time for paying) and ending on the day on which such tax is paid.

(e) In addition to any other penalty imposed by this chapter, any person who fails to obtain a certificate of registration or decal as required under this article shall, after due notice and an opportunity for a hearing, for a first violation be liable for a civil fine not less than five hundred dollars but not to exceed two thousand dollars and for a second or subsequent violation within three years following a prior finding of violation be liable for a civil fine not less than one thousand dollars but not to exceed three thousand five hundred dollars.

(f) The penalties and interest imposed by this subdivision shall be assessed, collected and paid in the same manner as the taxes imposed by this article. Interest under this subdivision shall be compounded daily.

2. For purposes of this chapter the failure to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the department of taxation and finance in Albany. For purposes of this chapter, the certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this article, or that a claim for refund has been filed, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, that such information has not been supplied, or that such claim has been filed.

3. Violations of this article may be prosecuted by the attorney general in the name of the people of the state, in which case the attorney general shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to

exercise or to perform therein.

4. Cross-reference: For criminal penalties and other offenses, see article thirty-seven of this chapter.

§ 512-a. Admissibility of weigh slips. An official weigh slip or ticket issued and certified by any truck weigher in the employ of the department of transportation or by any duly licensed weigh master shall constitute prima facie evidence of the information therein set forth and of the operation of the vehicle therein described upon a public highway and shall be admissible before any court in any civil proceeding.

§ 513. Refunds. Whenever the commissioner shall determine that any monies received under the provisions of this article were paid in error, he may cause the same to be refunded or credited, with interest, in accordance with such rules and regulations as he may prescribe, except that no interest shall be allowed or paid if the amount thereof would be less than one dollar. Such interest shall be at the overpayment rate set by the commissioner pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter, or if no rate is set, at the rate of six percent per annum, from the date when the tax, penalty or interest to be refunded or credited was paid to a date preceding the date of the refund check by not more than thirty days. Provided, however, that for the purposes of this section, any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day. Such moneys received under the provisions of this article which the commissioner shall determine were paid in error, may be refunded or credited out of funds in the custody of the comptroller to the credit of such taxes provided an application therefor is filed with the commissioner within four years from the time the erroneous payment was made, except if an agreement under the provisions of section five hundred ten (extending the period for determination of tax imposed by this article) is made within the four-year period for the filing of an application for refund provided for in this section, the period for filing an application for refund shall not expire prior to six months

after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof.

§ 514. Secrecy of returns. 1. Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the tax commission, any tax commissioner, any officer or employee of the department of taxation and finance, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article, to divulge or make known in any manner the contents or any other information relating to the business of a carrier or other person contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the department of taxation and finance, the department of transportation or the tax commission in an action or proceeding under the provisions of this chapter, the vehicle and traffic law or the transportation law, or on behalf of the state or the tax commission in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the tax commission is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article or the vehicle and traffic law or the transportation law when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or on behalf of officers to whom information shall have been supplied as provided in subdivision two of this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. The tax commission may, nevertheless, publish a copy or a summary of any decision rendered after the formal hearing provided for in section five

hundred ten of this chapter. Nothing herein shall be construed to prohibit the tax commission, in its discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report by or to a duly authorized officer or employee of the department of transportation, or by or to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to the provisions of this chapter, the vehicle and traffic law or the transportation law in which such returns or reports or the facts shown thereby are directly involved; or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by any person under this article; nor to prohibit the delivery to any person, or a duly authorized representative of such person of a certified copy of any return or report filed by such person pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof; nor to prohibit the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by section five hundred six of this chapter, together with any relevant information which in the opinion of the tax commission may assist in the collection of such delinquent taxes. Returns and reports shall be preserved for four years, and thereafter until the tax commission orders them to be destroyed.

2. The tax commission, in its discretion and pursuant to such rules and regulations as it may adopt, may permit the commissioner of internal revenue of the United States, or the appropriate officers of any other state which imposes a similar highway use tax, or the duly authorized representatives of such commissioner or of any such officers, to inspect returns or reports made pursuant to this article, or may furnish to such commissioner or other officers, or duly authorized representatives, a copy of any such return or report or an abstract of the information therein contained, or any portion thereof, or may supply such commissioner or any such officers or such representatives with information relating to the business of any person making returns or

reports hereunder. The tax commission may refuse to supply information pursuant to this subdivision to the commissioner of internal revenue of the United States or to the officers of any other state if the statutes of the United States, or of the state represented by such officers, do not grant substantially similar privileges to the tax commission of this state, but such refusal shall not be mandatory. Information shall not be supplied to the commissioner of internal revenue of the United States or the appropriate officers of any other state which imposes a similar highway use tax, or the duly authorized representatives of such commissioner or of any of such officers, unless such commissioner, officer or other representatives shall agree not to divulge or make known in any manner the information so supplied, but such officers may transmit such information to their employees or legal representatives when necessary, who in turn shall be subject to the same restrictions as those hereby imposed upon such commissioner, officer or other representatives.

3. (a) Any officer or employee of the state who willfully violates the provisions of subdivision one or two of this section shall be dismissed from office and be barred from holding any public office in this state for a period of five years thereafter.

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

4. Notwithstanding the provisions of subdivision one of this section, the tax commission, in its discretion, may require or permit any or all persons or carriers liable for any tax or fee imposed by this article, to make payment of any tax, fee, penalty or interest to banks, banking houses or trust companies designated by the tax commission and to file returns and reports with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section five hundred fifteen.

5. Notwithstanding any other provision of this section: (a) Upon

agreement with the heads of the department of motor vehicles, the department of transportation, the department of environmental conservation, the division of state police, the thruway authority, the United States department of transportation, and the United States department of homeland security (or any other federal agency which may assume the duties of either or both of such federal agencies), the commissioner may disclose to such agencies the name, address, employer identification number, vehicle identification number, application status information, and other appropriate identifying and application information, of persons holding a certification of registration or license under this article, persons whose certificate of registration or license under this article has been revoked, suspended or surrendered, and persons whose application for a certificate of registration or license under this article has been denied, for the purposes of improving the safety and security oversight of the motor carrier industry and coordinating and streamlining the credentialing process for such industry administered by such agencies.

(b) Any information disclosed by the commissioner pursuant to paragraph (a) of this subdivision may, pursuant to such agreement, be re-disclosed by and among the heads of such agencies and may also be re-disclosed to the heads of comparable agencies of any other state, the District of Columbia or any province or territory of Canada in furtherance of the purposes specified in this subdivision.

6. (a) Notwithstanding the provisions of subdivision one of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns or reports specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject

to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return or report, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return or report, and any social security numbers, account numbers and residential address information.

(b) No returns or reports shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns or reports have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or reports or return or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns or reports are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C.

Section 6103(f).

§ 514-a. Mailing rules; holidays. 1. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the tax commission.

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

3. (a) Any reference in subdivision one of this section to the United States mail shall be treated as including a reference to any delivery

service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision one of this section to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner finds that any delivery service designated by such secretary is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this article, or may withdraw any such designation if the commissioner finds that a delivery service so designated is inadequate for the needs of the state. Any reference in subdivision one of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner and any reference in subdivision one of this section to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner.

(b) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner pursuant to the same criteria used by the secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision one of this section. If the commissioner finds that any equivalent of registered or certified mail designated by such secretary or the commissioner is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article.

§ 515. Disposition of revenues. All taxes, interest, penalties and fees collected or received pursuant to this article shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, and to the

credit of the comptroller on account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law. Such an account may be established in one or more of such depositories and such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories.

Of the revenues so deposited, the comptroller shall retain in his hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds or reimbursements of the taxes collected or received pursuant to this article to which taxpayers shall be entitled under the provisions of this article, out of which amount the comptroller shall pay any refunds or reimbursements of the taxes collected or received pursuant to this article to which taxpayers shall be entitled under such provisions. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the last day of each month, pay the balance of the revenue so deposited during such month into the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law.

Notwithstanding the foregoing or any other law to the contrary, the comptroller shall deposit all monies collected on account of the registration fees imposed pursuant to section five hundred two-a and subdivision eight of section five hundred nine of this article into the highway use tax administration account established pursuant to section ninety-nine-y of the state finance law. The monies deposited in such account shall be available to the commissioner for the costs of issuing the certificates of registration and highway use tax decals required by this article and for any other costs of administering the provisions of sections five hundred two, five hundred two-a and five hundred nine of this article. Any moneys not used in a given year shall be returned to such account and be added to the total funds available for disbursement in the succeeding year.

ARTICLE 21-A
TAX ON FUEL USE

Section 521. Definitions.

522. Licenses.

523. Fuel use tax.

524. Credits and refunds.

525. Exemptions.

526. Returns and payment of tax.

527. Interest and penalty.

528. Procedure, administration and disposition of revenues.

§ 521. Definitions. For purposes of this article, the following definitions shall apply unless a different meaning is clearly required:

(a) "Person" shall include an individual, co-partner, society, association, corporation, joint stock company, lessee, and any combinations of individuals; an executor, administrator, receiver, trustee or other fiduciary.

(b) Qualified motor vehicle. (1) "Qualified motor vehicle" means a vehicle, other than a recreational vehicle, used, designed or maintained for transportation of persons or property and:

(i) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds; or

(ii) Having three or more axles regardless of weight; or

(iii) Is used in combination, when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight.

(2) "Recreational vehicle" means vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by individuals. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

(c) "Carrier" shall include any person having the lawful use or control, or the right to the use or control of any qualified motor vehicle in this state.

(d) "Public highway" shall include any public highway, street, avenue, road, public place, public driveway or any other public way.

§ 522. Licenses. (a) License and decal required. Each carrier shall

apply to the commissioner for a fuel use license and a decal or decals for each qualified motor vehicle operated or to be operated by it on the public highways in this state. An original or renewal application shall be made on a form prescribed by the commissioner and shall be accompanied by an application fee of four dollars for each decal required. Upon approval of the application, the commissioner shall issue a license to the applicant and a decal or decals for each qualified motor vehicle. The license shall be valid for the calendar year to which it relates and shall be renewed annually. The license shall be reproduced by the licensee and placed in each qualified motor vehicle to be operated in this state and the decal or decals shall be affixed as prescribed by the commissioner. In the case of the loss, mutilation or destruction of a license or the commissioner shall issue a duplicate license upon proof of facts and payment of a fee of two dollars or a new decal upon proof of facts and payment of a fee of four dollars for each decal. The fuel use license and any decals issued to a carrier shall not be transferable.

(b) Prohibited activity. Except as provided in this article, no person shall operate a qualified motor vehicle on the public highways of this state without the license and decals for such qualified motor vehicles under this section or, if the commissioner enters into a cooperative agreement pursuant to section five hundred twenty-eight of this article, the license and decal authorizing such operation pursuant to such agreement.

(c) Denial, suspension and revocation. The commissioner, for cause, may deny a license and suspend or revoke any license issued under this section, after an opportunity for a hearing has been afforded the carrier; provided, however, that a license may be denied or it may be suspended or revoked for failure to file a return as required pursuant to this article or for nonpayment of moneys due under this article prior to a hearing. A violation of any of the provisions of this article or article twenty-one of this chapter or of any rule or regulation of the commissioner promulgated under this article or such article twenty-one shall constitute sufficient cause for the denial, suspension or revocation of a license. In addition, if the commissioner enters into a cooperative agreement with other jurisdictions pursuant to section five hundred twenty-eight of this article, the commissioner may deny an

application for license where a license previously issued to the applicant is under suspension or revocation by any member jurisdiction and a license may be revoked or suspended for failure to comply with such agreement. A denial, revocation or suspension of a license shall be final unless the applicant or licensee shall, within thirty days after the giving of notice of such denial, revocation or suspension, petition the division of tax appeals for a hearing in accordance with article forty of this chapter. If the commissioner enters into a cooperative agreement pursuant to such section five hundred twenty-eight, notice of a hearing shall be given and a hearing held within any time restrictions prescribed in such agreement.

(d) Trip permits. In lieu of the license and decal provided for in subdivision (a) of this section, any carrier, except as hereinafter limited, may apply to the commissioner for a trip permit for any qualified motor vehicle to be operated by him on the public highways of this state. Application for the trip permit shall be made on a form prescribed by the commissioner and shall contain such information as the commissioner shall require. The application shall be accompanied by a fee of twenty-five dollars for each qualified motor vehicle. Each trip permit shall be valid for a period of seventy-two hours from the time of its issuance. The issuance of a trip permit for a qualified motor vehicle shall exempt the carrier from the requirement of filing returns and payment of the taxes imposed by this article and section three hundred one-h of this chapter on the operation of such qualified motor vehicle for the effective period of the permit but no refund application may be filed on account of trip permit applications. Provided, however, that in order for any person liable for the tax to claim such exemption, such person must retain a copy of the trip permit in his records for the complete period of time required by section five hundred seven of this chapter. A carrier may not apply for more than ten trip permits under this section during a single calendar year.

(e) Motor vehicle registration. If the license covering any qualified motor vehicle has been suspended or revoked under this section, the department of motor vehicles shall not thereafter reregister the qualified motor vehicle or transfer the registration of ownership thereof upon the records of the department until there is furnished to such department a certificate issued by the commissioner to the effect

that the carrier has fully complied with the provisions of this article. On and after the date tax is first imposed by this article, the department of motor vehicles shall not reregister or transfer the registered ownership of any qualified motor vehicle covered by a license under this article until there is furnished to it a certificate of tax clearance issued by the commissioner. Such certificate shall be issued after the payment of all monies known to be due under this article or after the payment of any such amount is secured to the satisfaction of the commissioner.

(f) Construction regarding vehicle and traffic law. Nothing herein contained shall be construed as authorizing motor vehicle weight limits in excess of those permitted by the vehicle and traffic law.

§ 523. Fuel use tax. (a) Imposition. There is hereby imposed on and after January first, nineteen hundred ninety-six a tax on fuel use for the privilege of operating any qualified motor vehicle upon the public highways of this state.

(b) Rate of tax. The tax imposed by this section shall be at a composite rate determined by adding together (1) a fuel tax component which shall be equal to the applicable rate per gallon in effect under the taxes on motor fuel and diesel motor fuel imposed by article twelve-A of this chapter and (2) a sales tax component, which shall be equal to the sum of (A) a state sales and compensating use tax subcomponent, equal to the applicable rate per gallon in effect under the sales and compensating use taxes on motor fuel and diesel motor fuel imposed by sections eleven hundred five and eleven hundred ten of this chapter as described in subdivision (m) of section eleven hundred eleven of this chapter plus (B) a local sales and compensating use tax subcomponent, which shall be the lower of (i) the lowest applicable rate per gallon in effect under the sales and compensating use taxes on such fuels in effect in any county of this state imposing a local sales and compensating use tax on a cents per gallon basis pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, or (ii) the equivalent rate per gallon based on the highest rate applicable to the receipts from the sale of a gallon of motor fuel or diesel motor fuel in effect in any locality of this state imposing a

local sales and compensating use tax on a percentage rate basis on the sale of motor fuel and diesel motor fuel pursuant to the authority of subpart B of part one of article twenty-nine of this chapter. Provided, however, that the total rate per gallon applicable to the receipts from the sale of a gallon of such fuels imposed under clause (ii) of subparagraph (B) of paragraph two of this subdivision shall not exceed three percent. Such equivalent rate per gallon under clause (ii) of subparagraph B of paragraph two of this subdivision shall be determined as provided in subdivision (d) or (m) of section eleven hundred eleven of this chapter and the schedules prescribed by the commissioner pursuant to such subdivision (d), and shall be based on the average price per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels upon which the state and local sales and compensating use taxes are computed but determined without the inclusion of any state or local sales tax on receipts from sales of such fuels) paid by the carrier during the reporting period for all motor fuel and diesel motor fuel purchased for use in its operations either within or without this state. For purposes of clause (ii) of subparagraph (B) of paragraph two of this subdivision, the price for motor fuel and diesel motor fuel purchased by such carrier shall be deemed to be the prevailing price for motor fuel and diesel motor fuel, as established by the commissioner each calendar quarter pursuant to this section, applicable to the reporting period. The commissioner shall for each calendar quarter establish a prevailing price for motor fuel and diesel motor fuel based on the prices being charged on any given day during the first fifteen days of the previous calendar quarter at a minimum of ten selected truck stops widely scattered throughout the state. The tax imposed by this section shall be computed by multiplying such composite rate by the amount of motor fuel or diesel motor fuel, as the case may be, used by a carrier in its operations within this state during each reporting period. The amount of motor fuel and diesel motor fuel used in the operations of any carrier within this state shall be determined by dividing the number of miles traveled in this state subject to tax under this section by the average miles per gallon for the type of fuel. Where the records of any carrier are inadequate or incomplete, the qualified motor vehicles of a carrier filing returns shall be deemed to have consumed, on the average, one

gallon of diesel motor fuel for every four miles traveled or one gallon of motor fuel for every three miles traveled unless substantial evidence discloses that a different amount was consumed; provided, however, that if the commissioner enters into a cooperative agreement pursuant to section five hundred twenty-eight of this article and such agreement prescribes a different average miles per gallon deemed to be consumed, the commissioner shall prescribe such different average.

§ 524. Credits and refunds. (a) Purchases. Every carrier subject to the tax imposed by this article shall be entitled to a credit against such tax determined by adding together the following components: (1) a fuel tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel purchased by such carrier within this state in a return period, for use in its operations either within or without this state, by the applicable rate per gallon imposed on such fuel under article twelve-A of this chapter; provided, however, no credit shall be allowed unless the tax imposed under such article twelve-A upon such purchase of fuel has been paid by such carrier, and (2) a sales tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel purchased by such carrier within this state in a return period, for use in its operations within or without this state by the applicable rate per gallon of the sales tax component; provided, however, such credit shall not exceed the tax imposed under article twenty-eight or pursuant to the authority of article twenty-nine of this chapter upon such purchase of fuel that has been paid by the carrier. Each carrier claiming such credit components shall furnish to the commissioner such evidence of payment of such taxes as the commissioner may require. When the amount of the credit to which any carrier is entitled for any return period exceeds the amount of tax for which such carrier is liable under this article for such return period, such excess shall be allowed as a credit against the tax for which such carrier would otherwise be liable for the eight succeeding calendar quarters following the end of the reporting period from which the excess was derived or, if a claim for refund is filed on or before the last day of the month immediately following the four-year period commencing with the end of the reporting period for which such excess is derived, the

amount of such excess for such period shall be refunded.

(b) Transition. Every carrier subject to the tax imposed by this article shall be entitled to a credit against the tax equal to the credit determined under subdivision three of section five hundred three-a of this chapter which the carrier would have been entitled to carry forward against the tax imposed by such section but for the termination of such tax. Such credit may be applied against the tax imposed by this section or refunded, subject to the limitations provided in subdivision (a) of this section. A person not subject to the tax imposed by this article may apply for a refund of such excess credit which such person would have been entitled to carry forward against the tax imposed by such section five hundred three-a but for the termination of such tax, subject to the limitations provided in subdivision (a) of this section.

(c) Actual price. Every carrier which can substantiate that its average price paid per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels upon which the state and local sales and compensating use taxes are computed but determined without the inclusion of any state or local sales tax on receipts from sales of such fuels) during a reporting period is less than the prevailing price determined for such period pursuant to subdivision (b) of section five hundred twenty-three of this article, if such calculation was based upon an amount determined under clause (ii) of subparagraph (B) of paragraph two of subdivision (b) of section five hundred twenty-three of this article, may apply for a refund of the difference between the tax paid relating to the sales tax component computed based upon such prevailing price for such period and the tax relating to the sales tax component computed based upon the carrier's actual average purchase price for such period. Such refund must be applied for on or before the last day of the month immediately following the four-year period commencing with the end of the reporting period which gave rise to the refund.

(d) Erroneous payment. Whenever the commissioner shall determine that any moneys received under the provisions of this article were paid in error, he or she may cause the same to be refunded or credited. Such moneys received under the provisions of this article which the commissioner shall determine were paid in error, may be refunded or

credited out of funds in the custody of the comptroller to the credit of such taxes provided an application therefor is filed with the commissioner within four years from the time the erroneous payment was made, except if an agreement under the provisions of section five hundred ten of this chapter as made applicable to the tax imposed by this article by section five hundred twenty-eight of this article (extending the period for determination of tax imposed by this article) is made within the four-year period for the filing of an application for refund provided for in this subdivision, the period for filing an application for refund shall not expire prior to six months after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof.

(e) Determination and review. The commissioner shall grant or deny a claim for refund under this section in whole or in part and shall notify the claimant by mail of the commissioner's determination. Such determination shall be final and irrevocable unless the claimant shall, within thirty days after the mailing of notice of such determination, petition the division of tax appeals for a hearing. If the commissioner enters into a cooperative agreement pursuant to section five hundred twenty-eight of this article, notice of a hearing shall be given and a hearing held within any time restrictions prescribed in such agreement. After such hearing, the division of tax appeals shall mail notice of the determination of the administrative law judge to the claimant and to the commissioner. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter. However, such a proceeding may not be commenced unless an undertaking is filed with the commissioner in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if the proceeding be dismissed or the decision confirmed, the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding.

§ 525. Exemptions. (a) General. The provisions of this article shall not apply to any qualified motor vehicle:

(1) Which is a road roller, tractor crane, truck crane, power shovel,

road building machine, snow plow, road sweeper, sand spreader or well driller.

(2) Which is described in section five hundred four of this chapter, except subdivision four of such section.

(b) Omnibus carriers. (1) An omnibus carrier shall not be required to apply for a license and decal or decals for a qualified motor vehicle which is an omnibus operated on a public highway in this state; except, if the commissioner enters into a cooperative agreement under subdivision (b) of section five hundred twenty-eight of this article, the commissioner may, pursuant to such agreement, require such a carrier to be licensed and obtain such decal or decals with respect to such a vehicle.

(2) The taxes imposed by this article shall not apply to motor fuel and diesel motor fuel used by an omnibus carrier in the operation of an omnibus in local transit service in this state, as described under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter, pursuant to a certificate of public convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city.

(c) Effect of cooperative agreement. Notwithstanding subdivisions (a) and (b) of this section, in the event that the commissioner enters into a cooperative agreement under subdivision (b) of section five hundred twenty-eight of this article, the commissioner may issue a license and decal or decals with respect to qualified motor vehicles described in subdivisions (a) and (b) of this section which are based in this state for the purpose of reporting and payment of tax imposed by other member jurisdictions with respect to such qualified motor vehicles.

§ 526. Returns and payment of tax. (a) Returns. Every carrier subject to this article and every carrier to whom a license was issued shall file a return quarterly, on or before the last day of the calendar month immediately following the close of each of the calendar quarters: January through March, April through June, July through September and

October through December. Provided, however, the commissioner may, if the commissioner deems it necessary in order to insure the payment of the taxes imposed by this article or to comply with a cooperative agreement with other jurisdictions pursuant to section five hundred twenty-eight of this article, require returns to be made at such times and covering such periods as the commissioner may deem necessary. Returns shall be filed on forms required by the commissioner for such purpose and shall contain such information and certification as the commissioner may require, including any information required pursuant to a cooperative agreement five hundred twenty-eight of this article. The fact that an individual's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such individual and that such individual is authorized to sign on behalf of the carrier.

(b) Payment of tax. At the time of filing a return, as required by this article, each carrier shall pay the tax imposed by this article for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

(c) Extensions. The commissioner may grant a reasonable extension of time for filing returns or paying the tax whenever good cause exists and may waive the filing of returns if a carrier is not subject to the tax imposed by this article for the period covered by the return.

(d) Leases. In those instances where the carrier is not the owner of the qualified motor vehicle, the owner may be licensed and file returns and maintain records pursuant to this article as prescribed by the commissioner or, if the commissioner enters into a cooperative agreement under section five hundred twenty-eight of this article, as prescribed in such agreement. In any event, where the carrier is not the owner of a qualified motor vehicle, the owner shall be jointly and severally liable with the carrier for payment of tax under this article with respect to such qualified motor vehicle.

§ 527. Interest and penalty. (a) Interest on tax due. If any amount of tax is not paid on or before the last date prescribed in this article for payment (determined without regard to any extension of time for

payment), interest on such amount at the rate of one percent per month or fraction thereof shall be paid for the period from such last date to the date paid.

(b) Penalty. Any person failing to file a return or to pay any tax within the time required by or pursuant to this article (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of fifty dollars or ten percent of the amount of tax determined to be due, whichever is greater. If the commissioner determines that the failure or delay was due to reasonable cause and not due to willful neglect, the commissioner shall waive all or part of such penalty.

(c) Interest on refunds. Interest at the rate determined under subdivision (a) of this section shall be paid with respect to a refund claim for the period ninety days after receipt of a claim for refund in processible form to the date immediately preceding the date of the refund check. No interest shall be paid if the check is mailed within ninety days of such receipt.

(d) Fraud. If the failure to pay any tax within the time required by or pursuant to this article is due to fraud, in lieu of the penalties provided for in subdivision (b) of this section, there shall be added to the tax (1) a penalty of two times the amount of tax due.

(e) Enforcement of penalty and interest. The penalties and interest imposed by or pursuant to this section shall be assessed, collected and paid in the same manner as the taxes imposed by this article.

(f) Cooperative agreement. If the commissioner enters into a cooperative agreement pursuant to section five hundred twenty-eight of this article and: (1) this state is thereby authorized to impose penalties on taxes collected on behalf of other jurisdictions pursuant to such agreement, then the penalties imposed by this section shall apply with respect to such taxes; (2) the rates of interest or any penalty or the method of computation contained therein is different from that prescribed in this section or the imposition of a penalty prescribed in this section is precluded by such agreement, then the provisions of such agreement shall apply.

(g) Location of acts; evidence. For purposes of this chapter the failure to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the

department of taxation and finance in Albany. For purposes of this chapter, the certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this article, or that a claim for refund has been filed, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, that such information has not been supplied, or that such claim has been filed.

(h) Prosecution. Violations of this article may be prosecuted by the attorney general in the name of the people of the state, in which case the attorney general shall exercise all powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein.

(i) Cross-reference. For criminal penalties and other offenses, see article thirty-seven of this chapter.

§ 528. Procedure, administration and disposition of revenues. (a) General. The provisions of subdivision two of section five hundred six and sections five hundred seven through five hundred fifteen of this chapter (excluding sections five hundred eight, five hundred twelve and five hundred thirteen) shall apply to the provisions of this article with the same force and effect as if the language of such subdivision and sections had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with or not relevant to this article or inconsistent with a provision of any agreement which the commissioner enters into pursuant to subdivision (b) of this section, with such modification as may be necessary to adapt the language of such provisions to the tax imposed by this article, provided that (1) notwithstanding such section five hundred ten and subdivision four of section two thousand six of this chapter, a determination, as provided in such section five hundred ten, relating to the tax imposed by this article, shall finally and conclusively fix such tax, unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, petition the division of tax appeals for a hearing, or unless the commissioner on the commissioner's own

motion shall redetermine the same; (2) the term "vehicular unit" shall be read as "qualified motor vehicle"; (3) if the commissioner enters into a cooperative agreement under this section, the reference in section five hundred fourteen-a of this chapter to the United States postmark shall include a postmark made by the Canadian postal service; and (4) if the commissioner enters into a cooperative agreement under this section, for purposes of applying subdivision four of section five hundred fourteen of this chapter, the banks, banking houses or trust companies which may be designated by the commissioner may include any such banks, banking houses or trust companies designated or seeking designation by other member jurisdictions. For purposes of determining the amount of tax due in accordance with section five hundred ten of this chapter as incorporated by this subdivision, any return filed before the last day prescribed for its filing shall be deemed to be filed on such last day. The commissioner is authorized to provide for the joint administration, in whole or in part, of the tax imposed by article twenty-one of this chapter and the tax imposed by this article.

(b) Cooperative agreements. Notwithstanding any inconsistent provision of law, the commissioner is authorized to enter into a cooperative agreement with other states, the District of Columbia or provinces or territories of Canada for the administration of the tax imposed by this article and similar taxes imposed by other member jurisdictions and for the reporting and payment of tax to a single base state and a proportional sharing of revenue of taxes relating to fuel use among the jurisdictions where a qualified motor vehicle is operated. The agreement may provide for determining the base state for carriers, carriers records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required and requiring bonds to secure the tax imposed by this article and similar taxes imposed by other member jurisdictions, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of taxes, interest and penalties to another jurisdiction, notice and timing of hearings and other provisions as will facilitate the administration of the agreement. The commissioner may, pursuant to the terms of the agreement, forward to the proper officers of another member jurisdiction any information in

the commissioner's possession relating to the manufacture, receipt, sale, use, transportation or shipment of motor fuel or diesel motor fuel by any person and may share any information relating to the administration of taxes pursuant to the agreement with such officers. The commissioner may disclose to the proper officers of another member jurisdiction the location of offices, motor vehicles and other real and personal property of carriers. The agreement may provide for each member jurisdiction to audit the records of persons based in the member jurisdiction and determine taxes due each member jurisdiction. The commissioner may adopt rules and regulations for the administration and enforcement of the agreement. In connection with the administration of taxes under such a cooperative agreement, the commissioner may enter into an agreement with other member jurisdictions and any banks, banking houses, trust companies or other similar institutions with respect to the payment of any tax, fees, penalty or interest to such banks, banking houses, trust companies or similar institutions and the filing of returns and reports with such banks, banking houses, trust companies or similar institutions as agent of the commissioner and such other member jurisdictions. Pursuant to a written agreement made with one or more of the appropriate departments, agencies, officers or instrumentalities of other jurisdictions, the commissioner may let contracts for provision of such services to the department and to one or more of such entities of other jurisdictions; provided, that provisions shall be made in all such agreements with the participating governmental entities and in all such contracts let by the commissioner for the assumption by each of the participating governmental entities of sole responsibility for its proportionate share of the costs under the terms of such contract. The commissioner may contract for such services jointly with and pursuant to a contract let by the appropriate department, agency, officer or instrumentality of another jurisdiction; provided that (1) the commissioner shall approve the proposed terms and conditions of all such joint governmental contracts, (2) the letting of such joint governmental contract shall be based on invitation of competitive bids or proposals, and (3) the participation by the department in any such joint contract shall be preceded by an evaluation and finding in writing by the commissioner that a reasonable potential exists for the saving of costs by the state, by means of such joint governmental contract.

(c) Rate changes. In the event the rate of tax imposed under this article or under section three hundred one-h of this chapter or the rate of surcharge imposed on such tax changes and such change does not coincide with the beginning of a reporting period, the rates of tax and surcharge for the reporting period which includes such change shall be equal to the sum of the respective rates otherwise applicable in each month of the reporting period divided by the number of months in the reporting period.

(d) Construction. In the event the commissioner, pursuant to the authority of this article, enters into a cooperative agreement as provided in this section, the commissioner shall carry out any provision of such agreement required for continued New York state participation in such agreement, to the extent not inconsistent with a specific requirement of this article or any other provision of the laws and the constitution of the state of New York.

ARTICLE 22 **PERSONAL INCOME TAX**

PART I-GENERAL

- Section 601. Imposition of tax.
- 601-a. Cost of living adjustment.
- 603. Separate tax on the ordinary income portion of lump sum distributions.
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- 606. Credits against tax.
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- 630-e. Gift to the love your library fund.
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- 630-f*3. Gift for school-based health centers.

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- 630-f*5. Gift for military families.
- 630-f*6. Gift for city university of New York.
- 630-g. Gift for leukemia, lymphoma and myeloma research, education and treatment.
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PART I-GENERAL

- Section 601. Imposition of tax.
- 601-a. Cost of living adjustment.
 - 603. Separate tax on the ordinary income portion of lump sum distributions.
 - 605. General provisions and definitions.
 - 606. Credits against tax.
 - 607. Meaning of terms.

§ 601. Imposition of tax. (a) Resident married individuals filing joint returns and resident surviving spouses. There is hereby imposed for each taxable year on the New York taxable income of every resident married individual who makes a single return jointly with his spouse under subsection (b) of section six hundred fifty-one and on the New York taxable income of every resident surviving spouse a tax determined in accordance with the following tables:

(1) (A) For taxable years beginning after two thousand eleven and before two thousand eighteen:

If the New York taxable income is:	The tax is:
Not over \$16,000	4% of taxable income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over \$16,000

Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over \$22,000
Over \$26,000 but not over \$40,000	\$1,120 plus 5.90% of excess over \$26,000
Over \$40,000 but not over \$150,000	\$1,946 plus 6.45% of excess over \$40,000
Over \$150,000 but not over \$300,000	\$9,041 plus 6.65% of excess over \$150,000
Over \$300,000 but not over \$2,000,000	\$19,016 plus 6.85% of excess over \$300,000
Over \$2,000,000	\$135,466 plus 8.82% of excess over \$2,000,000

(B)(i) For taxable years beginning in two thousand eighteen the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	4% of the New York taxable income
Over \$17,150 but not over \$23,600	\$686 plus 4.5% of excess over \$17,150
Over \$23,600 but not over \$27,900	\$976 plus 5.25% of excess over \$23,600
Over \$27,900 but not over \$43,000	\$1,202 plus 5.9% of excess over \$27,900
Over \$43,000 but not over \$161,550	\$2,093 plus 6.33% of excess over \$43,000
Over \$161,550 but not over \$323,200	\$9,597 plus 6.57% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$20,218 plus 6.85% of excess over \$323,200
Over \$2,155,350	\$145,720 plus 8.82% of excess over \$2,155,350

(ii) For taxable years beginning in two thousand nineteen the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	4% of the New York taxable income
Over \$17,150 but not over \$23,600	\$686 plus 4.5% of excess over

	\$17,150
Over \$23,600 but not over \$27,900	\$976 plus 5.25% of excess over \$23,600
Over \$27,900 but not over \$43,000	\$1,202 plus 5.9% of excess over \$27,900
Over \$43,000 but not over \$161,550	\$2,093 plus 6.21% of excess over \$43,000
Over \$161,550 but not over \$323,200	\$9,455 plus 6.49% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$19,946 plus 6.85% of excess over \$323,200
Over \$2,155,350	\$145,448 plus 8.82% of excess over \$2,155,350

(iii) For taxable years beginning in two thousand twenty the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	4% of the New York taxable income
Over \$17,150 but not over \$23,600	\$686 plus 4.5% of excess over \$17,150
Over \$23,600 but not over \$27,900	\$976 plus 5.25% of excess over \$23,600
Over \$27,900 but not over \$43,000	\$1,202 plus 5.9% of excess over \$27,900
Over \$43,000 but not over \$161,550	\$2,093 plus 6.09% of excess over \$43,000
Over \$161,550 but not over \$323,200	\$9,313 plus 6.41% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$19,674 plus 6.85% of excess \$323,200 over
Over \$2,155,350	\$145,177 plus 8.82% of excess over \$2,155,350

(iv) For taxable years beginning in two thousand twenty-one the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	4% of the New York taxable income
Over \$17,150 but not over \$23,600	\$686 plus 4.5% of excess over \$17,150

Over \$23,600 but not over \$27,900	\$976 plus 5.25% of excess over \$23,600
Over \$27,900 but not over \$43,000	\$1,202 plus 5.9% of excess over \$27,900
Over \$43,000 but not over \$161,550	\$2,093 plus 5.97% of excess over \$43,000
Over \$161,550 but not over \$323,200	\$9,170 plus 6.33% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$19,403 plus 6.85% of excess over \$323,200
Over \$2,155,350 but not over \$5,000,000	\$144,905 plus 9.65% of excess over \$2,155,350
Over \$5,000,000 but not over \$25,000,000	\$419,414 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,479,414 plus 10.90% of excess over \$25,000,000

(v) For taxable years beginning in two thousand twenty-two the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	4% of the New York taxable income
Over \$17,150 but not over \$23,600	\$686 plus 4.5% of excess over \$17,150
Over \$23,600 but not over \$27,900	\$976 plus 5.25% of excess over \$23,600
Over \$27,900 but not over \$161,550	\$1,202 plus 5.85% of excess over \$27,900
Over \$161,550 but not over \$323,200	\$9,021 plus 6.25% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$19,124 plus 6.85% of excess over \$323,200
Over \$2,155,350 but not over \$5,000,000	\$144,626 plus 9.65% of excess over \$2,155,350
Over \$5,000,000 but not over \$25,000,000	\$419,135 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,479,135 plus 10.90% of excess over \$25,000,000

(vi) For taxable years beginning in two thousand twenty-three and

before two thousand twenty-six the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	4% of the New York taxable income
Over \$17,150 but not over \$23,600	\$686 plus 4.5% of excess over \$17,150
Over \$23,600 but not over \$27,900	\$976 plus 5.25% of excess over \$23,600
Over \$27,900 but not over \$161,550	\$1,202 plus 5.5% of excess over \$27,900
Over \$161,550 but not over \$323,200	\$8,553 plus 6.00% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$18,252 plus 6.85% of excess over \$323,200
Over \$2,155,350 but not over \$5,000,000	\$143,754 plus 9.65% of excess over \$2,155,350
Over \$5,000,000 but not over \$25,000,000	\$418,263 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,478,263 plus 10.90% of excess over \$25,000,000

(vii) For taxable years beginning after two thousand twenty-five and before two thousand twenty-seven the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	3.90% of the New York taxable income
Over \$17,150 but not over \$23,600	\$669 plus 4.40% of excess over \$17,150
Over \$23,600 but not over \$27,900	\$953 plus 5.15% of excess over \$23,600
Over \$27,900 but not over \$161,550	\$1,174 plus 5.40% of excess over \$27,900
Over \$161,550 but not over \$323,200	\$8,391 plus 5.90% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$17,928 plus 6.85% of excess over \$323,200
Over \$2,155,350 but not over \$5,000,000	\$143,430 plus 9.65% of excess over \$2,155,350
Over \$5,000,000 but not over	\$417,939 plus 10.30% of excess

\$25,000,000	over \$5,000,000
Over \$25,000,000	\$2,477,939 plus 10.90% of excess over \$25,000,000

(viii) For taxable years beginning after two thousand twenty-six and before two thousand thirty-three the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	3.80% of the New York taxable income
Over \$17,150 but not over \$23,600	\$652 plus 4.30% of excess over \$17,150
Over \$23,600 but not over \$27,900	\$929 plus 5.05% of excess over \$23,600
Over \$27,900 but not over \$161,550	\$1,146 plus 5.30% of excess over \$27,900
Over \$161,550 but not over \$323,200	\$8,229 plus 5.80% of excess over \$161,550
Over \$323,200 but not over \$2,155,350	\$17,605 plus 6.85% of excess over \$323,200
Over \$2,155,350 but not over \$5,000,000	\$143,107 plus 9.65% of excess over \$2,155,350
Over \$5,000,000 but not over \$25,000,000	\$417,616 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,477,616 plus 10.90% of excess over \$25,000,000

(ix) For taxable years beginning after two thousand thirty-two the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$17,150	3.80% of the New York taxable income
Over \$17,150 but not over \$23,600	\$652 plus 4.30% of excess over \$17,150
Over \$23,600 but not over \$27,900	\$929 plus 5.05% of excess over \$23,600
Over \$27,900 but not over \$161,550	\$1,146 plus 5.30% of excess over \$27,900
Over \$161,550 but not over \$323,200	\$8,229 plus 5.80% of excess over \$161,550

Over \$323,200 but not over \$2,155,350	\$17,605 plus 6.85% of excess over \$323,200
Over \$2,155,350	\$143,107 plus 8.82% of excess over \$2,155,350

(1-a) For taxable years beginning after two thousand eight and before two thousand twelve:

If the New York taxable income is:	The tax is:
Not over \$16,000	4% of the New York taxable income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over \$16,000
Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over \$22,000
Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over \$26,000
Over \$40,000 but not over \$300,000	\$1,946 plus 6.85% of excess over \$40,000
Over \$300,000 but not over \$500,000	\$19,756 plus 7.85% of excess over \$300,000
Over \$500,000	\$35,456 plus 8.97% of excess over \$500,000

(2) For taxable years beginning after two thousand five and before two thousand nine:

If the New York taxable income is:	The tax is:
Not over \$16,000	4% of the New York taxable income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over \$16,000
Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over \$22,000
Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over \$26,000
Over \$40,000	\$1,946 plus 6.85% of excess over \$40,000

(3) For taxable years beginning in two thousand five:

If the New York taxable income is:	The tax is:
Not over \$16,000	4% of the New York taxable

	income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over \$16,000
Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over \$22,000
Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over \$26,000
Over \$40,000 but not over \$150,000	\$1,946 plus 6.85% of excess over \$40,000
Over \$150,000 but not over \$500,000	\$9,481 plus 7.25% of excess over \$150,000
Over \$500,000	\$34,856 plus 7.7% of excess over \$500,000

(4) For taxable years beginning in two thousand four:	
If the New York taxable income is:	The tax is:
Not over \$16,000	4% of the New York taxable income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over \$16,000
Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over \$22,000
Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over \$26,000
Over \$40,000 but not over \$150,000	\$1,946 plus 6.85% of excess over \$40,000
Over \$150,000 but not over \$500,000	\$9,481 plus 7.375% of excess over \$150,000
Over \$500,000	\$35,294 plus 7.7% of excess over \$500,000

(5) For taxable years beginning in two thousand three:	
If the New York taxable income is:	The tax is:
Not over \$16,000	4% of the New York taxable income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over \$16,000
Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over \$22,000

Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over \$26,000
Over \$40,000 but not over \$150,000	\$1,946 plus 6.85% of excess over \$40,000
Over \$150,000 but not over \$500,000	\$9,481 plus 7.5% of excess over \$150,000
Over \$500,000	\$35,731 plus 7.7% of excess over \$500,000

(6) For taxable years beginning after nineteen hundred ninety-six and before two thousand three:

If the New York taxable income is:	The tax is:
Not over \$16,000	4% of the New York taxable income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of excess over \$16,000
Over \$22,000 but not over \$26,000	\$910 plus 5.25% of excess over \$22,000
Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of excess over \$26,000
Over \$40,000	\$1,946 plus 6.85% of excess over \$40,000

(7) For taxable years beginning in nineteen hundred ninety-six:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$16,000	\$440 plus 5% of excess over \$11,000
Over \$16,000 but not over \$22,000	\$690 plus 6% of excess over \$16,000
Over \$22,000	\$1,050 plus 7% of excess over \$22,000

(8) For taxable years beginning in nineteen hundred ninety-five:

If the New York taxable income is:	The tax is:
Not over \$13,000	4.55% of the New York taxable income
Over \$13,000 but not over \$19,000	\$592 plus 5.55% of excess over \$13,000

Over \$19,000 but not over \$25,000	\$925 plus 6.55% of excess over \$19,000
Over \$25,000	\$1,318 plus 7.5% of excess over \$25,000

(9) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$16,000	\$440 plus 5% of excess over \$11,000
Over \$16,000 but not over \$22,000	\$690 plus 6% of excess over \$16,000
Over \$22,000 but not over \$26,000	\$1,050 plus 7% of excess over \$22,000
Over \$26,000	\$1,330 plus 7.875% of excess over \$26,000

(b) Resident heads of households. There is hereby imposed for each taxable year on the New York taxable income of every resident head of a household a tax determined in accordance with the following tables:

(1) (A) For taxable years beginning after two thousand eleven and before two thousand eighteen:

If the New York taxable income is:	The tax is:
Not over \$12,000	4% of taxable income
Over \$12,000 but not over \$16,500	\$480 plus 4.5% of excess over \$12,000
Over \$16,500 but not over \$19,500	\$683 plus 5.25% of excess over \$16,500
Over \$19,500 but not over \$30,000	\$840 plus 5.90% of excess over \$19,500
Over \$30,000 but not over \$100,000	\$1,460 plus 6.45% of excess over \$30,000
Over \$100,000 but not over \$250,000	\$5,975 plus 6.65% of excess over \$100,000
Over \$250,000 but not over \$1,500,000	\$15,950 plus 6.85% of excess over \$250,000
Over \$1,500,000	\$101,575 plus 8.82% of excess over \$1,500,000

\$1,500,000

(B)(i) For taxable years beginning in two thousand eighteen the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	4% of the New York taxable income
Over \$12,800 but not over \$17,650	\$512 plus 4.5% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$730 plus 5.25% of excess over \$17,650
Over \$20,900 but not over \$32,200	\$901 plus 5.9% of excess over \$20,900
Over \$32,200 but not over \$107,650	\$1,568 plus 6.33% of excess over \$32,200
Over \$107,650 but not over \$269,300	\$6,344 plus 6.57% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$16,964 plus 6.85% of excess over \$269,300
Over \$1,616,450	\$109,244 plus 8.82% of excess over \$1,616,450

(ii) For taxable years beginning in two thousand nineteen the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	4% of the New York taxable income
Over \$12,800 but not over \$17,650	\$512 plus 4.5% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$730 plus 5.25% of excess over \$17,650
Over \$20,900 but not over \$32,200	\$901 plus 5.9% of excess over \$20,900
Over \$32,200 but not over \$107,650	\$1,568 plus 6.21% of excess over \$32,200
Over \$107,650 but not over \$269,300	\$6,253 plus 6.49% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$16,744 plus 6.85% of excess over \$269,300
Over \$1,616,450	\$109,024 plus 8.82% of excess over \$1,616,450

(iii) For taxable years beginning in two thousand twenty the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	4% of the New York taxable income

Over \$12,800 but not over \$17,650	\$512 plus 4.5% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$730 plus 5.25% of excess over \$17,650
Over \$20,900 but not over \$32,200	\$901 plus 5.9% of excess over \$20,900
Over \$32,200 but not over \$107,650	\$1,568 plus 6.09% of excess over \$32,200
Over \$107,650 but not over \$269,300	\$6,162 plus 6.41% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$16,524 plus 6.85% of excess over \$269,300
Over \$1,616,450	\$108,804 plus 8.82% of excess over \$1,616,450

(iv) For taxable years beginning in two thousand twenty-one the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	4% of the New York taxable income
Over \$12,800 but not over \$17,650	\$512 plus 4.5% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$730 plus 5.25% of excess over \$17,650
Over \$20,900 but not over \$32,200	\$901 plus 5.9% of excess over \$20,900
Over \$32,200 but not over \$107,650	\$1,568 plus 5.97% of excess over \$32,200
Over \$107,650 but not over \$269,300	\$6,072 plus 6.33% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$16,304 plus 6.85% of excess over \$269,300
Over \$1,616,450 but not over \$5,000,000	\$108,584 plus 9.65% of excess over \$1,616,450
Over \$5,000,000 but not over \$25,000,000	\$435,097 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,495,097 plus 10.90% of excess over \$25,000,000

(v) For taxable years beginning in two thousand twenty-two the following rates shall apply:

If the New York taxable income is:	The tax is:
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Not over \$12,800	4% of the New York taxable income
Over \$12,800 but not over \$17,650	\$512 plus 4.5% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$730 plus 5.25% of excess over \$17,650
Over \$20,900 but not over \$107,650	\$901 plus 5.85% of excess over \$20,900
Over \$107,650 but not over \$269,300	\$5,976 plus 6.25% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$16,079 plus 6.85% of excess over \$269,300
Over \$1,616,450 but not over \$5,000,000	\$108,359 plus 9.65% of excess over \$1,616,450
Over \$5,000,000 but not over \$25,000,000	\$434,871 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,494,871 plus 10.90% of excess over \$25,000,000

(vi) For taxable years beginning in two thousand twenty-three and before two thousand twenty-six the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	4% of the New York taxable income
Over \$12,800 but not over \$17,650	\$512 plus 4.5% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$730 plus 5.25% of excess over \$17,650
Over \$20,900 but not over \$107,650	\$901 plus 5.5% of excess over \$20,900
Over \$107,650 but not over \$269,300	\$5,672 plus 6.00% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$15,371 plus 6.85% of excess over \$269,300
Over \$1,616,450 but not over \$5,000,000	\$107,651 plus 9.65% of excess over \$1,616,450
Over \$5,000,000 but not over \$25,000,000	\$434,163 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,494,163 plus 10.90% of excess over \$25,000,000

(vii) For taxable years beginning after two thousand twenty-five and before two thousand twenty-seven the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	3.90% of the New York taxable income
Over \$12,800 but not over \$17,650	\$499 plus 4.40% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$712 plus 5.15% of excess over \$17,650
Over \$20,900 but not over \$107,650	\$879 plus 5.40% of excess over \$20,900
Over \$107,650 but not over \$269,300	\$5,564 plus 5.90% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$15,101 plus 6.85% of excess over \$269,300
Over \$1,616,450 but not over \$5,000,000	\$107,381 plus 9.65% of excess over \$1,616,450
Over \$5,000,000 but not over \$25,000,000	\$433,894 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,493,894 plus 10.90% of excess over \$25,000,000

(viii) For taxable years beginning after two thousand twenty-six and before two thousand thirty-three the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	3.80% of the New York taxable income
Over \$12,800 but not over \$17,650	\$486 plus 4.30% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$695 plus 5.05% of excess over \$17,650
Over \$20,900 but not over \$107,650	\$859 plus 5.30% of excess over \$20,900
Over \$107,650 but not over \$269,300	\$5,457 plus 5.80% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$14,833 plus 6.85% of excess over \$269,300
Over \$1,616,450 but not over	\$107,113 plus 9.65% of excess

\$5,000,000	over \$1,616,450
Over \$5,000,000 but not over \$25,000,000	\$433,626 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,493,626 plus 10.90% of excess over \$25,000,000

(ix) For taxable years beginning after two thousand thirty-two the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$12,800	3.80% of the New York taxable income
Over \$12,800 but not over \$17,650	\$486 plus 4.30% of excess over \$12,800
Over \$17,650 but not over \$20,900	\$695 plus 5.05% of excess over \$17,650
Over \$20,900 but not over \$107,650	\$859 plus 5.30% of excess over \$20,900
Over \$107,650 but not over \$269,300	\$5,457 plus 5.80% of excess over \$107,650
Over \$269,300 but not over \$1,616,450	\$14,833 plus 6.85% of excess over \$269,300
Over \$1,616,450	\$107,113 plus 8.82% of excess over \$1,616,450

(1-a) For taxable years beginning after two thousand eight and before two thousand twelve:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over \$11,000
Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over \$15,000
Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over \$17,000
Over \$30,000 but not over \$250,000	\$1,492 plus 6.85% of excess over \$30,000
Over \$250,000 but not over \$500,000	\$16,562 plus 7.85% of excess over \$250,000

Over \$500,000	\$36,187 plus 8.97% of excess over \$500,000
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(2) For taxable years beginning after two thousand five and before two thousand nine:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over \$11,000
Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over \$15,000
Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over \$17,000
Over \$30,000	\$1,492 plus 6.85% of excess over \$30,000

(3) For taxable years beginning in two thousand five:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over \$11,000
Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over \$15,000
Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over \$17,000
Over \$30,000 but not over \$125,000	\$1,492 plus 6.85% of excess over \$30,000
Over \$125,000 but not over \$500,000	\$8,000 plus 7.25% of excess over \$125,000
Over \$500,000	\$35,187 plus 7.7% of excess over \$500,000

(4) For taxable years beginning in two thousand four:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over \$11,000

Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over \$15,000
Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over \$17,000
Over \$30,000 but not over \$125,000	\$1,492 plus 6.85% of excess over \$30,000
Over \$125,000 but not over \$500,000	\$8,000 plus 7.375% of excess over \$125,000
Over \$500,000	\$35,656 plus 7.7% of excess over \$500,000

(5) For taxable years beginning in two thousand three:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over \$11,000
Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over \$15,000
Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over \$17,000
Over \$30,000 but not over \$125,000	\$1,492 plus 6.85% of excess over \$30,000
Over \$125,000 but not over \$500,000	\$8,000 plus 7.5% of excess over \$125,000
Over \$500,000	\$36,125 plus 7.7% of excess over \$500,000

(6) For taxable years beginning after nineteen hundred ninety-six and before two thousand three:

If the New York taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$15,000	\$440 plus 4.5% of excess over \$11,000
Over \$15,000 but not over \$17,000	\$620 plus 5.25% of excess over \$15,000
Over \$17,000 but not over \$30,000	\$725 plus 5.9% of excess over \$17,000

Over \$30,000	\$1,492 plus 6.85% of excess over \$30,000
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(7) For taxable years beginning in nineteen hundred ninety-six:

If the New York taxable income is: The tax is:

Not over \$7,500	4% of the New York taxable income
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Over \$7,500 but not over \$11,000	\$300 plus 5% of excess over \$7,500
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Over \$11,000 but not over \$15,000	\$475 plus 6% of excess over \$11,000
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Over \$15,000	\$ 715 plus 7% of excess over \$15,000
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(8) For taxable years beginning in nineteen hundred ninety-five:

If the New York taxable income is: The tax is:

Not over \$9,000	4.55% of the New York taxable income
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Over \$9,000 but not over \$14,000	\$410 plus 5.55% of excess over \$9,000
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Over \$14,000 but not over \$19,000	\$687 plus 6.55% of excess over \$14,000
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Over \$19,000	\$1,015 plus 7.5% of excess over \$19,000
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(9) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the New York taxable income is: The tax is:

Not over \$7,500	4% of the New York taxable income
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Over \$7,500 but not over \$11,000	\$300 plus 5% of excess over \$7,500
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Over \$11,000 but not over \$15,000	\$475 plus 6% of excess over \$11,000
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Over \$15,000 but not over \$17,000	\$715 plus 7% of excess over \$15,000
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Over \$17,000	\$855 plus 7.875% of excess over \$17,000
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(c) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. There is hereby

imposed for each taxable year on the New York taxable income of every resident individual who is not a married individual who makes a single return jointly with his spouse under subsection (b) of section six hundred fifty-one or a resident head of a household or a resident surviving spouse, and on the New York taxable income of every resident estate and trust a tax determined in accordance with the following tables:

(1) (A) For taxable years beginning after two thousand eleven and before two thousand eighteen:

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over \$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.90% of excess over \$13,000
Over \$20,000 but not over \$75,000	\$973 plus 6.45% of excess over \$20,000
Over \$75,000 but not over \$200,000	\$4,521 plus 6.65% of excess over \$75,000
Over \$200,000 but not over \$1,000,000	\$12,833 plus 6.85% of excess over \$200,000
Over \$1,000,000	\$67,633 plus 8.82% of excess over \$1,000,000

(B)(i) For taxable years beginning in two thousand eighteen the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	4% of the New York taxable income
Over \$8,500 but not over \$11,700	\$340 plus 4.5% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$484 plus 5.25% of excess over \$11,700
Over \$13,900 but not over \$21,400	\$600 plus 5.9% of excess over \$13,900
Over \$21,400 but not over \$80,650	\$1,042 plus 6.33% of excess over \$21,400

Over \$80,650 but not over \$215,400	\$4,793 plus 6.57% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$13,646 plus 6.85% of excess over \$215,400
Over \$1,077,550	\$72,703 plus 8.82% of excess over \$1,077,550

(ii) For taxable years beginning in two thousand nineteen the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	4% of the New York taxable income
Over \$8,500 but not over \$11,700	\$340 plus 4.5% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$484 plus 5.25% of excess over \$11,700
Over \$13,900 but not over \$21,400	\$600 plus 5.9% of excess over \$13,900
Over \$21,400 but not over \$80,650	\$1,042 plus 6.21% of excess over \$21,400
Over \$80,650 but not over \$215,400	\$4,721 plus 6.49% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$13,467 plus 6.85% of excess over \$215,400
Over \$1,077,550	\$72,524 plus 8.82% of excess over \$1,077,550

(iii) For taxable years beginning in two thousand twenty the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	4% of the New York taxable income
Over \$8,500 but not over \$11,700	\$340 plus 4.5% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$484 plus 5.25% of excess over \$11,700
Over \$13,900 but not over \$21,400	\$600 plus 5.9% of excess over \$13,900
Over \$21,400 but not over \$80,650	\$1,042 plus 6.09% of excess over \$21,400
Over \$80,650 but not over \$215,400	\$4,650 plus 6.41% of excess over

	\$80,650
Over \$215,400 but not over \$1,077,550	\$13,288 plus 6.85% of excess over \$215,400
Over \$1,077,550	\$72,345 plus 8.82% of excess over \$1,077,550

(iv) For taxable years beginning in two thousand twenty-one the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	4% of the New York taxable income
Over \$8,500 but not over \$11,700	\$340 plus 4.5% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$484 plus 5.25% of excess over \$11,700
Over \$13,900 but not over \$21,400	\$600 plus 5.9% of excess over \$13,900
Over \$21,400 but not over \$80,650	\$1,042 plus 5.97% of excess over \$21,400
Over \$80,650 but not over \$215,400	\$4,579 plus 6.33% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$13,109 plus 6.85% of excess over \$215,400
Over \$1,077,550 but not over \$5,000,000	\$72,166 plus 9.65% of excess over \$1,077,550
Over \$5,000,000 but not over \$25,000,000	\$450,683 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,510,683 plus 10.90% of excess over \$25,000,000

(v) For taxable years beginning in two thousand twenty-two the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	4% of the New York taxable income
Over \$8,500 but not over \$11,700	\$340 plus 4.5% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$484 plus 5.25% of excess over \$11,700
Over \$13,900 but not over \$80,650	\$600 plus 5.85% of excess over \$13,900

Over \$80,650 but not over \$215,400	\$4,504 plus 6.25% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$12,926 plus 6.85% of excess over \$215,400
Over \$1,077,550 but not over \$5,000,000	\$71,984 plus 9.65% of excess over \$1,077,550
Over \$5,000,000 but not over \$25,000,000	\$450,500 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,510,500 plus 10.90% of excess over \$25,000,000

(vi) For taxable years beginning in two thousand twenty-three and before two thousand twenty-six the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	4% of the New York taxable income
Over \$8,500 but not over \$11,700	\$340 plus 4.5% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$484 plus 5.25% of excess over \$11,700
Over \$13,900 but not over \$80,650	\$600 plus 5.50% of excess over \$13,900
Over \$80,650 but not over \$215,400	\$4,271 plus 6.00% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$12,356 plus 6.85% of excess over \$215,400
Over \$1,077,550 but not over \$5,000,000	\$71,413 plus 9.65% of excess over \$1,077,550
Over \$5,000,000 but not over \$25,000,000	\$449,929 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,509,929 plus 10.90% of excess over \$25,000,000

(vii) For taxable years beginning after two thousand twenty-five and before two thousand twenty-seven the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	3.90% of the New York taxable income
Over \$8,500 but not over \$11,700	\$332 plus 4.40% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$473 plus 5.15% of excess over

	\$11,700
Over \$13,900 but not over \$80,650	\$586 plus 5.40% of excess over \$13,900
Over \$80,650 but not over \$215,400	\$4,191 plus 5.90% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$12,141 plus 6.85% of excess over \$215,400
Over \$1,077,550 but not over \$5,000,000	\$71,198 plus 9.65% of excess over \$1,077,550
Over \$5,000,000 but not over \$25,000,000	\$449,714 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,509,714 plus 10.90% of excess over \$25,000,000

(viii) For taxable years beginning after two thousand twenty-six and before two thousand thirty-three the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	3.80% of the New York taxable income
Over \$8,500 but not over \$11,700	\$323 plus 4.30% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$461 plus 5.05% of excess over \$11,700
Over \$13,900 but not over \$80,650	\$572 plus 5.30% of excess over \$13,900
Over \$80,650 but not over \$215,400	\$4,110 plus 5.80% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$11,926 plus 6.85% of excess over \$215,400
Over \$1,077,550 but not over \$5,000,000	\$70,983 plus 9.65% of excess over \$1,077,550
Over \$5,000,000 but not over \$25,000,000	\$449,499 plus 10.30% of excess over \$5,000,000
Over \$25,000,000	\$2,509,499 plus 10.90% of excess over \$25,000,000

(ix) For taxable years beginning after two thousand thirty-two the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over \$8,500	3.80% of the New York taxable income

Over \$8,500 but not over \$11,700	\$323 plus 4.30% of excess over \$8,500
Over \$11,700 but not over \$13,900	\$461 plus 5.05% of excess over \$11,700
Over \$13,900 but not over \$80,650	\$572 plus 5.30% of excess over \$13,900
Over \$80,650 but not over \$215,400	\$4,110 plus 5.80% of excess over \$80,650
Over \$215,400 but not over \$1,077,550	\$11,926 plus 6.85% of excess over \$215,400
Over \$1,077,550	\$70,983 plus 8.82% of excess over \$1,077,550

(1-a) For taxable years beginning after two thousand eight and before two thousand twelve:

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of the New York taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over \$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over \$13,000
Over \$20,000 but not over \$200,000	\$973 plus 6.85% of excess over \$20,000
Over \$200,000 but not over \$500,000	\$13,303 plus 7.85% of excess over \$200,000
Over \$500,000	\$36,853 plus 8.97% of excess over \$500,000

(2) For taxable years beginning after two thousand five and before two thousand nine:

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of the New York taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over \$11,000

	\$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over \$13,000
Over \$20,000	\$973 plus 6.85% of excess over \$20,000

(3) For taxable years beginning in two thousand five:

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of the New York taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over \$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over \$13,000
Over \$20,000 but not over \$100,000	\$973 plus 6.85% of excess over \$20,000
Over \$100,000 but not over \$500,000	\$6,453 plus 7.25% of excess over \$100,000
Over \$500,000	\$35,453 plus 7.7% of excess over \$500,000

(4) For taxable years beginning in two thousand four:

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of the New York taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over \$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over \$13,000
Over \$20,000 but not over \$100,000	\$973 plus 6.85% of excess over \$20,000
Over \$100,000 but not over \$500,000	\$6,453 plus 7.375% of excess over \$100,000
Over \$500,000	\$35,953 plus 7.7% of excess over \$500,000

(5) For taxable years beginning in two thousand three:

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of the New York taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over \$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over \$13,000
Over \$20,000 but not over \$100,000	\$973 plus 6.85% of excess over \$20,000
Over \$100,000 but not over \$500,000	\$6,453 plus 7.5% of excess over \$100,000
Over \$500,000	\$36,453 plus 7.7% of excess over \$500,000

(6) For taxable years beginning after nineteen hundred ninety-six and before two thousand three:

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of the New York taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of excess over \$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.9% of excess over \$13,000
Over \$20,000	\$973 plus 6.85% of excess over \$20,000

(7) For taxable years beginning in nineteen hundred ninety-six:

If the New York taxable income is:	The tax is:
Not over \$5,500	4% of the New York taxable income
Over \$5,500 but not over \$8,000	\$220 plus 5% of excess over \$5,500
Over \$8,000 but not over \$11,000	\$345 plus 6% of excess over \$8,000

Over \$11,000	\$525 plus 7% of excess over \$11,000
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(8) For taxable years beginning in nineteen hundred ninety-five:

If the New York taxable income is: The tax is:

Not over \$6,500	4.55% of the New York taxable income
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Over \$6,500 but not over \$9,500	\$296 plus 5.55% of excess over \$6,500
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Over \$9,500 but not over \$12,500	\$462 plus 6.55% of excess over \$9,500
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Over \$12,500	\$659 plus 7.5% of excess over \$12,500
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(9) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the New York taxable income is:

The tax is:

Not over \$5,500	4% of the New York taxable income
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Over \$5,500 but not over \$8,000	\$220 plus 5% of excess over \$5,500
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Over \$8,000 but not over \$11,000	\$345 plus 6% of excess over \$8,000
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Over \$11,000 but not over \$13,000	\$525 plus 7% of excess over \$11,000
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Over \$13,000	\$665 plus 7.875% of excess over \$13,000
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(d) Tax table benefit recapture. For taxable years beginning after nineteen hundred ninety, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections or section six hundred ninety-nine of this article, as the case may be. The supplemental tax shall be an amount equal to the sum of the tax table benefits in paragraphs one, two and three of this subsection multiplied by their respective fractions in such paragraphs provided, however, that paragraph two of this subsection shall not apply to taxpayers that are not subject to the second highest rate of tax.

(1) Resident married individuals filing joint returns, resident surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a), (b) or (c), of this section, as the case may be, or in section six hundred ninety-nine, as the case may be, not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subsection (a), (b) or (c) of this section, as the case may be, or section six hundred ninety-nine, as the case may be.

(B) The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(2) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a), (b) or (c) of this section, as the case may be, not subject to the second highest rate of tax for the taxable year multiplied by such rate and (ii) the second highest dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subsection (a), (b) or (c) of this section, as the case may be, less the tax table benefit in paragraph one of this subsection.

(B) For taxable years beginning after two thousand two and before two thousand six, the fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred fifty thousand dollars and the denominator is fifty thousand dollars. For taxable years beginning after two thousand eight and before two thousand twelve, the fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over three hundred thousand dollars and the denominator is

fifty thousand dollars.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six and after two thousand eight and before two thousand twelve.

(3) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a), (b) or (c) of this section, as the case may be, not subject to the highest rate of tax for the taxable year multiplied by such rate and (ii) the highest dollar denominated tax set forth in the tax table applicable to the taxable year in subsection (a), (b) or (c) of this section, as the case may be, less the sum of the tax table benefits in paragraphs one and two of this subsection.

(B) For such taxpayers with adjusted gross income over five hundred thousand dollars, for taxable years beginning after two thousand eight and before two thousand twelve, the fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over five hundred thousand dollars and the denominator is fifty thousand dollars. Provided, however, that the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax table in subsection (a) of this section multiplied by the taxpayer's taxable income.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six and after two thousand eight and before two thousand twelve.

(d-1) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d) of this section, for taxable years beginning after two thousand eleven, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident

surviving spouses, the supplemental tax shall be an amount equal to the sum of the tax table benefits described in subparagraphs (A), (B), (C) and (D) of this paragraph multiplied by their respective fractions in such subparagraphs. Furthermore, in making the calculations described in these subparagraphs in taxable years beginning after tax year two thousand seventeen, the applicable tax rates specified in subparagraph (B) of paragraph one of subsection (a) of this section shall be substituted for the rates referenced in these subparagraphs.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 6.45 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(B) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 6.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the tax table benefit in subparagraph (A) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred fifty thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.65 percent tax rate.

(C) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section

less the sum of the tax table benefit in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over three hundred thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.85 percent tax rate.

(D) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 8.82 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B) and (C) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over two million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to taxable years beginning on or after January first, two thousand twelve and before January first, two thousand twenty-one and for tax years beginning on or after January first, two thousand twenty-eight.

(E) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 9.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B), and (C) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over two million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(F) The tax table benefit is the difference between (i) the amount of

taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 10.30 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B), (C) and (E) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over five million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(G) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 10.90 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B), (C), (E) and (F) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over twenty-five million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(H) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (a) of this section multiplied by the taxpayer's taxable income.

(2) For resident heads of households, the supplemental tax shall be an amount equal to the sum of the tax table benefits described in subparagraphs (A), (B) and (C) of this paragraph multiplied by their respective fractions in such subparagraphs. Furthermore, in making the calculations described in these subparagraphs in taxable years beginning after tax year two thousand seventeen, the applicable tax rates

specified in subparagraph (B) of paragraph one of subsection (b) of this section shall be substituted for the rates referenced in these subparagraphs.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (b) of this section not subject to the 6.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (b) of this section. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(B) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (b) of this section not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (b) of this section less the tax table benefit in subparagraph (A) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over two hundred fifty thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.85 percent tax rate.

(C) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (b) of this section not subject to the 8.82 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (b) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one million five hundred thousand dollars and the denominator is fifty

thousand dollars. This subparagraph shall apply only to taxable years beginning on or after January first, two thousand twelve and before January first, two thousand twenty-one and for tax years beginning on or after January first, two thousand twenty-eight.

(D) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 9.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over one million five hundred thousand dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(E) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 10.30 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B) and (D) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over five million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(F) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 10.90 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable

to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B), (D) and (E) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over twenty-five million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(G) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (b) of this section multiplied by the taxpayer's taxable income.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts, the supplemental tax shall be an amount equal to the sum of the tax table benefits described in subparagraphs (A), (B) and (C) of this paragraph multiplied by their respective fractions in such subparagraphs. Furthermore, in making the calculations described in these subparagraphs in taxable years beginning after tax year two thousand seventeen, the applicable tax rates specified in subparagraph (B) of paragraph one of subsection (c) of this section shall be substituted for the rates referenced in these subparagraphs.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (c) of this section not subject to the 6.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (c) of this section. The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(B) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (c) of this section not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax

for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (c) of this section less the tax table benefit in subparagraph (A) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over two hundred thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.85 percent tax rate.

(C) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (c) of this section not subject to the 8.82 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (c) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to taxable years beginning on or after January first, two thousand twelve and before January first, two thousand twenty-one and for tax years beginning on or after January first, two thousand twenty-eight.

(D) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 9.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over one million five hundred thousand dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before

January first, two thousand twenty-eight.

(E) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 10.30 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B) and (D) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over five million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(F) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 10.90 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B), (D) and (E) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or excess of New York adjusted gross income for the taxable year over twenty-five million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to the taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-eight.

(G) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (c) of this section multiplied by the taxpayer's taxable income.

(d-2) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d) or (d-1) of this section, for taxable years beginning on or after two thousand twenty-one and before two thousand twenty-two, there is hereby imposed a supplemental tax in addition to

the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d) or (d-1) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$43,000	\$161,550	\$0	\$474
\$161,550	\$323,200	\$474	\$582
\$323,200	\$2,155,350	\$1,056	\$1,680
\$2,155,350	\$5,000,000	\$2,736	\$60,350
\$5,000,000	\$25,000,000	\$63,086	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$43,000	\$161,550	New York adjusted gross income minus \$107,650
\$161,550	\$323,200	New York adjusted gross income minus \$161,550
\$323,200	\$2,155,350	New York adjusted gross income minus \$323,200
\$2,155,350	\$5,000,000	New York adjusted gross income minus \$2,155,350
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than forty-three thousand dollars, the supplemental tax shall equal the difference between the product of 5.97 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus

one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section.

(2) For resident heads of households:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$107,650	\$269,300	\$0	\$742
\$269,300	\$1,616,450	\$742	\$1,401
\$1,616,450	\$5,000,000	\$2,143	\$45,260
\$5,000,000	\$25,000,000	\$47,403	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$107,650	\$269,300	New York adjusted gross income minus \$107,650
\$269,300	\$1,616,450	New York adjusted gross income minus \$269,300
\$1,616,450	\$5,000,000	New York adjusted gross income minus \$1,616,450
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than one hundred seven thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 6.33 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six

hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$80,650	\$215,400	\$0	\$526
\$215,400	\$1,077,550	\$526	\$1,120
\$1,077,550	\$5,000,000	\$1,646	\$30,171
\$5,000,000	\$25,000,000	\$31,817	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$80,650	\$215,400	New York adjusted gross income minus \$107,650
\$215,400	\$1,077,550	New York adjusted gross income minus \$215,400
\$1,077,550	\$5,000,000	New York adjusted gross income minus \$1,077,550
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than eighty thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 6.33 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted

gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section.

(d-3) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d), (d-1) or (d-2) of this section, for taxable years beginning on or after two thousand twenty-two and before two thousand twenty-three, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d), (d-1) or (d-2) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$27,900	\$161,550	\$0	\$430
\$161,550	\$323,200	\$430	\$646
\$323,200	\$2,155,350	\$1,076	\$1,940
\$2,155,350	\$5,000,000	\$3,016	\$60,349
\$5,000,000	\$25,000,000	\$63,365	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$27,900	\$161,550	New York adjusted gross income minus \$107,650
\$161,550	\$323,200	New York adjusted gross income minus \$161,550
\$323,200	\$2,155,350	New York adjusted gross income minus \$323,200
\$2,155,350	\$5,000,000	New York adjusted gross income minus \$2,155,350
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of

which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than twenty-seven thousand nine hundred dollars, the supplemental tax shall equal the difference between the product of 5.85 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section.

(2) For resident heads of households:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$107,650	\$269,300	\$0	\$752
\$269,300	\$1,616,450	\$752	\$1,616
\$1,616,450	\$5,000,000	\$2,368	\$45,261
\$5,000,000	\$25,000,000	\$47,629	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$107,650	\$269,300	New York adjusted gross income minus \$107,650
\$269,300	\$1,616,450	New York adjusted gross income minus \$269,300
\$1,616,450	\$5,000,000	New York adjusted gross income minus \$1,616,450
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable

amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than one hundred seven thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 6.25 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$80,650	\$215,400	\$0	\$536
\$215,400	\$1,077,550	\$536	\$1,293
\$1,077,550	\$5,000,000	\$1,829	\$30,171
\$5,000,000	\$25,000,000	\$32,000	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$80,650	\$215,400	New York adjusted gross income minus \$107,650
\$215,400	\$1,077,550	New York adjusted gross income minus \$215,400
\$1,077,550	\$5,000,000	New York adjusted gross income minus \$1,077,550
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of

which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than eighty thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 6.25 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section.

(d-4) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d), (d-1), (d-2) or (d-3) of this section, for taxable years beginning on or after two thousand twenty-three and before two thousand twenty-six, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d), (d-1), (d-2) or (d-3) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$27,900	\$161,550	\$0	\$333
\$161,550	\$323,200	\$333	\$807
\$323,200	\$2,155,350	\$1,140	\$2,747

\$2,155,350	\$5,000,000	\$3,887	\$60,350
\$5,000,000	\$25,000,000	\$64,237	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$27,900	\$161,550	New York adjusted gross income minus \$107,650
\$161,550	\$323,200	New York adjusted gross income minus \$161,550
\$323,200	\$2,155,350	New York adjusted gross income minus \$323,200
\$2,155,350	\$5,000,000	New York adjusted gross income minus \$2,155,350
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than twenty-seven thousand nine hundred dollars, the supplemental tax shall equal the difference between the product of 5.50 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section.

(2) For resident heads of households:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$107,650	\$269,300	\$0	\$787
\$269,300	\$1,616,450	\$787	\$2,289

\$1,616,450	\$5,000,000	\$3,076	\$45,261
\$5,000,000	\$25,000,000	\$48,337	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$107,650	\$269,300	New York adjusted gross income minus \$107,650
\$269,300	\$1,616,450	New York adjusted gross income minus \$269,300
\$1,616,450	\$5,000,000	New York adjusted gross income minus \$1,616,450
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than one hundred seven thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 6.00 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$80,650	\$215,400	\$0	\$568

\$215,400	\$1,077,550	\$568	\$1,831
\$1,077,550	\$5,000,000	\$2,399	\$30,172
\$5,000,000	\$25,000,000	\$32,571	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$80,650	\$215,400	New York adjusted gross income minus \$107,650
\$215,400	\$1,077,550	New York adjusted gross income minus \$215,400
\$1,077,550	\$5,000,000	New York adjusted gross income minus \$1,077,550
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than eighty thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 6.00 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section.

(d-5) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d), (d-1), (d-2), (d-3), (d-4), (d-6) or (d-7) of this section, for taxable years beginning on or after two thousand twenty-six and before two thousand twenty-seven, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d), (d-1), (d-2),

(d-3), (d-4), (d-6) or (d-7) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$27,900	\$161,550	\$0	\$333
\$161,550	\$323,200	\$333	\$807
\$323,200	\$2,155,350	\$1,140	\$3,071
\$2,155,350	\$5,000,000	\$4,211	\$60,350
\$5,000,000	\$25,000,000	\$64,561	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$27,900	\$161,550	New York adjusted gross income minus \$107,650
\$161,550	\$323,200	New York adjusted gross income minus \$161,550
\$323,200	\$2,155,350	New York adjusted gross income minus \$323,200
\$2,155,350	\$5,000,000	New York adjusted gross income minus \$2,155,350
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than twenty-seven thousand nine hundred dollars, the supplemental tax shall equal the difference between the product of 5.40 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five

million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section.

(2) For resident heads of households:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$107,650	\$269,300	\$0	\$787
\$269,300	\$1,616,450	\$787	\$2,559
\$1,616,450	\$5,000,000	\$3,346	\$45,260
\$5,000,000	\$25,000,000	\$48,606	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$107,650	\$269,300	New York adjusted gross income minus \$107,650
\$269,300	\$1,616,450	New York adjusted gross income minus \$269,300
\$1,616,450	\$5,000,000	New York adjusted gross income minus \$1,616,450
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than one hundred seven thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 5.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five

million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$80,650	\$215,400	\$0	\$567
\$215,400	\$1,077,550	\$567	\$2,047
\$1,077,550	\$5,000,000	\$2,614	\$30,172
\$5,000,000	\$25,000,000	\$32,786	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$80,650	\$215,400	New York adjusted gross income minus \$107,650
\$215,400	\$1,077,550	New York adjusted gross income minus \$215,400
\$1,077,550	\$5,000,000	New York adjusted gross income minus \$1,077,550
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than eighty thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 5.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five

million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section.

(d-6) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d), (d-1), (d-2), (d-3), (d-4), (d-5) or (d-7) of this section, for taxable years beginning on or after two thousand twenty-seven and before two thousand thirty-three, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d), (d-1), (d-2), (d-3), (d-4), (d-5) or (d-7) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$27,900	\$161,550	\$0	\$333
\$161,550	\$323,200	\$333	\$808
\$323,200	\$2,155,350	\$1,141	\$3,393
\$2,155,350	\$5,000,000	\$4,534	\$60,350
\$5,000,000	\$25,000,000	\$64,884	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$27,900	\$161,550	New York adjusted gross income minus \$107,650
\$161,550	\$323,200	New York adjusted gross income minus \$161,550
\$323,200	\$2,155,350	New York adjusted gross income minus \$323,200

\$2,155,350	\$5,000,000	New York adjusted gross income minus \$2,155,350
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than twenty-seven thousand nine hundred dollars, the supplemental tax shall equal the difference between the product of 5.30 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section.

(2) For resident heads of households:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$107,650	\$269,300	\$0	\$787
\$269,300	\$1,616,450	\$787	\$2,827
\$1,616,450	\$5,000,000	\$3,614	\$45,260
\$5,000,000	\$25,000,000	\$48,874	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$107,650	\$269,300	New York adjusted gross income minus \$107,650
\$269,300	\$1,616,450	New York adjusted gross income minus \$269,300
\$1,616,450	\$5,000,000	New York adjusted gross income minus \$1,616,450
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than one hundred seven thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 5.80 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts:

(A) If New York adjusted gross income is greater than \$107,650, but not over \$25,000,000:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
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\$80,650	\$215,400	\$0	\$568
\$215,400	\$1,077,550	\$568	\$2,261
\$1,077,550	\$5,000,000	\$2,829	\$30,172
\$5,000,000	\$25,000,000	\$33,001	\$32,500

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$80,650	\$215,400	New York adjusted gross income minus \$107,650
\$215,400	\$1,077,550	New York adjusted gross income minus \$215,400
\$1,077,550	\$5,000,000	New York adjusted gross income minus \$1,077,550
\$5,000,000	\$25,000,000	New York adjusted gross income minus \$5,000,000

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than eighty thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 5.80 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(B) If New York adjusted gross income is greater than twenty-five million dollars, the supplemental tax due shall equal the difference between the product of 10.90 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section.

(d-7) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d), (d-1), (d-2), (d-3), (d-4), (d-5) or (d-6)

of this section, for taxable years beginning on or after two thousand thirty-three, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d), (d-1), (d-2), (d-3), (d-4), (d-5) or (d-6) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses:

(A) If New York adjusted gross income is greater than \$107,650:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$27,900	\$161,550	\$0	\$333
\$161,550	\$323,200	\$333	\$808
\$323,200	\$2,155,350	\$1,141	\$3,393
\$2,155,350		\$4,534	\$42,461

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$27,900	\$161,550	New York adjusted gross income minus \$107,650
\$161,550	\$323,200	New York adjusted gross income minus \$161,550
\$323,200	\$2,155,350	New York adjusted gross income minus \$323,200
\$2,155,350		New York adjusted gross income minus \$2,155,350

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than twenty-seven thousand nine hundred dollars, the supplemental tax shall equal the difference between the product of 5.30 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (a) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars,

and the denominator of which is fifty thousand dollars.

(2) For resident heads of households:

(A) If New York adjusted gross income is greater than \$107,650:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$107,650	\$269,300	\$0	\$787
\$269,300	\$1,616,450	\$787	\$2,827
\$1,616,450		\$3,614	\$31,844

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$107,650	\$269,300	New York adjusted gross income minus \$107,650
\$269,300	\$1,616,450	New York adjusted gross income minus \$269,300
\$1,616,450		New York adjusted gross income minus \$1,616,450

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than one hundred seven thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 5.80 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (b) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts:

(A) If New York adjusted gross income is greater than \$107,650:

(i) the recapture base and incremental benefit shall be determined by New York taxable income as follows:

Greater than	Not over	Recapture Base	Incremental Benefit
\$80,650	\$215,400	\$0	\$568

\$215,400	\$1,077,550	\$568	\$2,261
\$1,077,550		\$2,829	\$21,228

(ii) the applicable amount shall be determined by New York taxable income as follows:

Greater than	Not over	Applicable Amount
\$80,650	\$215,400	New York adjusted gross income minus \$107,650
\$215,400	\$1,077,550	New York adjusted gross income minus \$215,400
\$1,077,550		New York adjusted gross income minus \$1,077,550

(iii) the phase-in fraction shall be a fraction, the numerator of which shall be the lesser of fifty thousand dollars or the applicable amount and the denominator of which shall be fifty thousand dollars; and

(iv) the supplemental tax due shall equal the sum of the recapture base and the product of (i) the incremental benefit and (ii) the phase-in fraction. Provided, however, that if the New York taxable income of the taxpayer is less than eighty thousand six hundred fifty dollars, the supplemental tax shall equal the difference between the product of 5.80 percent and New York taxable income and the tax table computation on the New York taxable income set forth in paragraph one of subsection (c) of this section, multiplied by a fraction, the numerator of which is the lesser of fifty thousand dollars or New York adjusted gross income minus one hundred seven thousand six hundred fifty dollars, and the denominator of which is fifty thousand dollars.

(e) Nonresidents and part-year residents. (1) General. There is hereby imposed for each taxable year on the taxable income which is derived from sources in this state of every nonresident and part-year resident individual and trust and every nonresident estate a tax which shall be equal to the tax base multiplied by the New York source fraction.

(2) Tax base. The tax base is the tax computed under subsections (a) through (d) of this section, as the case may be, reduced by the credits permitted under subsections (b), (c), (d) and (m) of section six hundred six, as if such nonresident or part-year resident individual, estate or trust were a resident subject to the provisions of part II of this article.

(3) New York source fraction. The New York source fraction is a fraction the numerator of which is such individual's, estate's or trust's New York source income determined in accordance with part III of this article and the denominator of which is such individual's New York

adjusted gross income determined in accordance with part II of this article or such estate's or trust's New York adjusted gross income determined under paragraph four of this subsection.

(4) New York adjusted gross income of an estate or trust. New York adjusted gross income of an estate or trust means its federal adjusted gross income, determined under subsection (e) of section sixty-seven of the internal revenue code, with the modifications provided in section six hundred eighteen, other than that portion of the modification provided in subsection three thereof which relates to section six hundred fifteen.

(f) Partners and partnerships. A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities. As used in this article, the term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

(g) Associations taxable as corporations. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this article.

(h) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal and state income tax on unrelated business taxable income).

(i) Cross references. For definitions of New York taxable income of:

(1) Resident individual, see section six hundred eleven.

(2) Resident estate or trust, see section six hundred eighteen.

§ 601-a. Cost of living adjustment. (a) For tax year two thousand thirteen, the commissioner, not later than September first, two thousand twelve, shall multiply the amounts specified in subsection (b) of this section for tax year two thousand twelve by one plus the cost of living adjustment described in subsection (c) of this section. For tax year two thousand fourteen, the commissioner, not later than September first, two thousand thirteen, shall multiply the amounts specified in subsection (b) of this section for tax year two thousand thirteen by one plus the cost of living adjustment. For each succeeding tax year after tax year two thousand fourteen and before tax year two thousand eighteen, the commissioner, not later than September first of such tax year, shall multiply the amounts specified in subsection (b) of this section for such tax year by one plus the cost of living adjustment described in subsection (c) of this section for such tax year.

(b) The following amounts shall be indexed by the cost of living adjustment.

(1) The dollar amounts in the tax tables set forth in paragraph one of subsection (a), paragraph one of subsection (b) and paragraph one of subsection (c) of section six hundred one of this part.

(2) The dollar amount in the numerator of the fractions in subsection (d) of section six hundred one of this part that is not fifty thousand dollars.

(3) The New York standard deduction of a resident individual in section six hundred fourteen of this article.

(c) The cost of living adjustment for a tax year is the percentage if any, by which the average monthly value of the consumer price index for the twelve month period ending on June thirtieth of the year immediately preceding the tax year for which the adjustment is being made (referred to as the adjustment year) exceeds the average monthly value of the consumer price index for the twelve month period ending on June thirtieth of the year immediately preceding the adjustment year. For purposes of this section, the consumer price index means the consumer price index for all urban consumers published by the United States department of labor.

(d) If the product of the amounts in subsection (b) and subsection (c) of this section is not a multiple of fifty dollars, such increase shall

be rounded to the next lowest multiple of fifty dollars.

§ 603. Separate tax on the ordinary income portion of lump sum distributions.--(a) Imposition of separate tax. In addition to any other tax imposed by this article, there is hereby imposed for each taxable year a separate tax on the ordinary income portion of a lump sum distribution of every individual, estate and trust which has made an election of lump sum treatment under subsection (e) of section four hundred two of the internal revenue code. The recipient of a lump sum distribution shall be liable for the tax imposed by this section. The credits against tax under this article, except for the credits under paragraphs two and four of subsection (c), paragraphs two and four of subsection (d) and subsection (e) of section six hundred six, section six hundred twenty-A and section six hundred seventy-three, shall not be allowed against the tax imposed by this section.

(b) Cross reference. For computation of tax, see section six hundred twenty-four with respect to residents and section six hundred thirty-seven with respect to nonresidents and part-year residents.

§ 605. General provisions and definitions. (a) Accounting periods and methods. (1) Accounting periods. A taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(2) Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this article shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the New York standard deduction and the New York exemptions shall be prorated under regulations of the tax commission.

(3) Accounting methods. A taxpayer's method of accounting under this article shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, New York taxable income shall be computed under such method as in the opinion of the tax commission clearly reflects income.

(4) Change of accounting methods. (A) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

(B) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(C) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the tax commission.

(b) Resident, nonresident and part-year resident defined. (1) Resident individual. A resident individual means an individual: (A) who is domiciled in this state, unless (i) the taxpayer maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or (ii) (I) within any period of five hundred forty-eight consecutive days the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (II) during the period of five hundred forty-eight consecutive days the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are not present in this state for more than ninety days, and (III) during the nonresident portion of the taxable year with or within which the period of five hundred forty-eight consecutive days begins and the nonresident portion of the taxable year with or within which the period ends, the taxpayer is present in this state for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that portion of the taxable year bears to five hundred forty-eight, or

(B) who maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable

year in this state, whether or not domiciled in this state for any portion of the taxable year, unless such individual is in active service in the armed forces of the United States.

(2) Nonresident individual. A nonresident individual means an individual who is not a resident or a part-year resident.

(3) Resident estate or trust. A resident estate or trust means:

(A) the estate of a decedent who at his death was domiciled in this state,

(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state, or

(C) a trust, or portion of a trust, consisting of the property of:

(i) a person domiciled in this state at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(ii) a person domiciled in this state at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

(D) (i) Provided, however, a resident trust is not subject to tax under this article if all of the following conditions are satisfied:

(I) all the trustees are domiciled in a state other than New York;

(II) the entire corpus of the trusts, including real and tangible property, is located outside the state of New York; and

(III) all income and gains of the trust are derived from or connected with sources outside of the state of New York, determined as if the trust were a non-resident trust.

(ii) For purposes of item (II) of clause (i) of this subparagraph, intangible property shall be located in this state if one or more of the trustees are domiciled in the state of New York.

(iii) Provided further, that for the purposes of item (I) of clause (i) of this subparagraph, a trustee which is a banking corporation as defined in subsection (a) of section fourteen hundred fifty-two of this chapter, as such section was in effect on December thirty-first, two thousand fourteen, and which is domiciled outside the state of New York at the time it becomes a trustee of the trust shall be deemed to

continue to be a trustee domiciled outside the state of New York notwithstanding that it thereafter otherwise becomes a trustee domiciled in the state of New York by virtue of being acquired by, or becoming an office or branch of, a corporate trustee domiciled within the state of New York.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(4) Nonresident estate or trust. (A) A nonresident estate means an estate which is not a resident.

(B) A nonresident trust means a trust which is not a resident or part-year resident.

(5) Part-year resident individual. A part-year resident individual is an individual who is not a resident or nonresident for the entire taxable year.

(6) Part-year resident trust. A part-year resident trust is a trust which is not a resident or nonresident for the entire taxable year.

(c) Tax treatment of charitable contributions for determining domicile. Notwithstanding any other provision of any other law to the contrary, the making of a financial contribution, gift, bequest, donation or any other financial instrument or pledge in any amount or the donation or loan of any object of any value, or the volunteering, giving or donation of uncompensated time, or any combination of the foregoing, considered a charitable contribution under subsection (c) of section one hundred seventy of the internal revenue code, or to a not-for-profit organization, as defined in subdivision seven of section one hundred seventy-nine-q of the state finance law, shall not be used in any manner to determine where an individual is domiciled.

§ 606. Credits against tax. (a) Investment tax credit (ITC). (1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the

credit shall be the per cent provided for hereinbelow of the investment credit base. The investment credit base is the cost or other basis, for federal income tax purposes, of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph two of this subsection, less the amount of the nonqualified nonrecourse financing with respect to such property to the extent such financing would be excludible from the credit base pursuant to section 46(c)(8) of the internal revenue code (treating such property as section thirty-eight property irrespective of whether or not it in fact constitutes section thirty-eight property). If, at the close of a taxable year following the taxable year in which such property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be treated as if it were the cost or other basis of property described in paragraph two of this subsection acquired, constructed, reconstructed or erected during the year of the decrease in the amount of nonqualified nonrecourse financing. The percentage to be used to compute the credit allowed pursuant to this subsection shall be that percentage appearing in column two which is opposite the appropriate period in column one in which the tangible personal property was acquired, constructed, reconstructed or erected, as the case may be:

Column 1	Column 2
After December 31, 1968 and prior to January 1, 1974	one per cent
After December 31, 1973 and prior to January 1, 1978	two per cent
After December 31, 1977 and prior to January 1, 1979	three per cent
After December 31, 1978 and prior to June 1, 1981	four per cent
After May 31, 1981 and prior to July 1, 1982	five per cent
After June 30, 1982 and before January 1, 1987	six per cent
After December 31, 1986	four per cent, except that in the case of research and development

property the applicable percentage shall be seven

Provided, however, that in the case of an acquisition, construction, reconstruction or erection which was commenced in any one period and continued or completed in any subsequent period the credit shall be the sum of the portions of the investment credit base attributable to each such period, which portion with respect to each such period shall be ascertained by multiplying such investment credit base by a fraction the numerator of which shall be the expenditures paid or incurred during such period for such purposes and the denominator of which shall be the total of all expenditures paid or incurred for such acquisition, construction, reconstruction or erection, multiplied by the allowable percentage for each such period.

(1-a) For a taxpayer that is an eligible farmer, as defined in subsection (n) of this section, the percentage to be used to compute the credit allowed under this subsection shall be twenty percent for property described in subparagraph (A) of paragraph two of this subsection that is principally used by the taxpayer in the production of goods by farming, agriculture, horticulture, floriculture or viticulture.

(2) (A) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (i) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (ii) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (iii) research and development property, (iv) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section

four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section 475(e) of the Internal Revenue Code, (v) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or (vi) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and air conditioning. For purposes of clauses (iv) and (v) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, or registered investment adviser is allowed a credit under this subsection if the property is used by its affiliated regulated broker, dealer or registered investment adviser in accordance with this subsection. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (iv) and (v) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (iv) and (v) of this subparagraph unless (I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or (II) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit

is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (III) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For the purposes of clause (III) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of clause (i) of this subparagraph, tangible personal property and other tangible property shall not include property principally used by the taxpayer in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains.

(B) For purposes of this paragraph, the following definitions shall apply:

(i) Manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other

tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

(ii) Research and development property shall mean property which is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(iii) Industrial waste treatment facilities shall mean property constituting facilities for the treatment, neutralization or stabilization of industrial waste and other wastes (as the terms "industrial waste" and "other wastes" are defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(iv) Air pollution control facilities shall mean property constituting facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the department of environmental conservation, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission. Such term shall further include flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities that conform with this subsection and which comply with the provisions of the State Acid Deposition Control

Act set forth in title nine of article nineteen of the environmental conservation law.

(v) For purposes of this paragraph, the terms "qualified film production facility" and "qualified film production company" shall have the same meaning as in section twenty-four of this chapter.

(C) However, such credit shall be allowed with respect to industrial waste treatment facilities and air pollution control facilities only on condition that such facilities have been certified by the state commissioner of environmental conservation or his designated representative, pursuant to subdivision one of section 17-0707 or subdivision one of section 19-0309 of the environmental conservation law, as complying with applicable provisions of the environmental conservation law, the public health law, the state sanitary code and codes, rules, regulations, permits or orders issued pursuant thereto.

(3) A taxpayer shall not be allowed a credit under this subsection with respect to any property described in clause (i) of subparagraph (B) of paragraph two hereof if such property qualifies for the modification allowed under either paragraph three or paragraph four of subsection (g) of section six hundred twelve whether or not such amount shall have been subtracted. Provided, however, with respect to property which qualifies for a modification under either clause (A), (B) or (C) of paragraph four of subsection (g) because such property was ordered on or before December thirty-first, nineteen hundred sixty-eight, but with respect to which no expenditure has been paid or incurred at such date, the taxpayer may elect to subtract the amount allowable under clauses (A), (B) or (C) or may take the credit provided by this subsection, but not both.

(4) A taxpayer shall not be allowed a credit under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation except where a taxpayer leases property to an affiliated regulated broker, dealer, or registered investment adviser that uses such property in accordance with clause (iv) or (v) of subparagraph (A) of paragraph two of this subsection. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be

allowed a credit under this subsection with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded. For purposes of this paragraph, the use of a qualified film production facility by a qualified film production company shall not be considered a lease of such facility to such company.

(5) If the amount of credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess allowed for a taxable year commencing prior to January first, nineteen hundred eighty-seven may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years, but in no event shall such credit be carried over to taxable years commencing on or after January first, nineteen hundred ninety-seven, and any amount of credit allowed for a taxable year commencing on or after January first, nineteen hundred eighty-seven and not deductible in such year may be carried over to the ten taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of carrying over any such excess, (A) a taxpayer who qualifies as an owner of a new business for purposes of paragraph ten of this subsection may, at the taxpayer's option, receive such excess as a refund, and (B) a taxpayer that is an eligible farmer as defined in subsection (n) of this section may, at the taxpayer's option, for taxable years beginning before January first, two thousand thirty-three, receive such excess as a refund. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(6) At the option of the taxpayer for taxable years commencing prior to January first, nineteen hundred eighty-seven, air or water pollution control facilities which qualify for elective modifications under subsection (h) of section six hundred twelve, or research and development facilities which qualify for elective modifications under paragraphs two and four of subsection (g) of section six hundred twelve may be treated as property principally used by the taxpayer in the

production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, provided the property otherwise qualifies under paragraph two of this subsection, in which event, a modification shall not be allowed under such subsection (h) and under such paragraphs two and four of subsection (g).

(7) (A) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subparagraph, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(B) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the internal revenue code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of

disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(C) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the internal revenue code, other than three-year property as defined in subsection (e) of such section one hundred sixty-eight which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(D) With respect to any property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total

number of months over which the taxpayer chooses to deduct the property under the internal revenue code.

(E) For purposes of this paragraph, property (i) which is described in subparagraph (B), (C) or (D) of this paragraph, and (ii) which is subject to paragraph twenty-six of subsection (c) and paragraph twenty-five of subsection (b) of section six hundred twelve of this chapter, shall be treated as property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to section one hundred sixty-eight of such code.

(F) For purposes of this paragraph, where a credit is allowed with respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, such revocation shall constitute a disposal or cessation of qualified use, unless such facility is described in clause (i) or (iii) of subparagraph (A) of paragraph two of this subsection. Also for purposes of this subparagraph, the use of an air pollution control facility or an industrial waste treatment facility for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable shall constitute a cessation of qualified use, unless such facility is described in clause (i) or (iii) of subparagraph (A) of paragraph two of this subsection.

(G) For taxable years commencing on or after January first, nineteen hundred eighty-seven, the amount required to be added back pursuant to this paragraph shall be augmented by an amount equal to the product of such amount and the underpayment rate of interest (without regard to compounding), set by the commissioner pursuant to subsection (j) of section six hundred ninety-seven, in effect on the last day of the taxable year.

(H) If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c) (8) of the internal revenue code) with respect to any property with respect to which the credit under this subsection was limited based on attributable nonqualified nonrecourse financing, then an amount equal to the decrease in such credit which would have resulted from reducing, by the amount of

such net increase, the cost or other basis taken into account with respect to such property must be added back in such taxable year. The amount of nonqualified nonrecourse financing shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than one year after the date such indebtedness was incurred.

(10) For purposes of paragraph five of this subsection, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business unless:

(A) the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four or former section one hundred eighty-five former section of article nine; article nine-A or thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty), article thirty-two of this chapter or which would have been subject to tax under such article thirty-two (as such article was in effect on December thirty-first, two thousand fourteen) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph five of this subsection with respect to refunding of credit to new business would be evaded; or

(B) the individual has operated such new business entity in this state for more than five taxable years (excluding short years of the business).

(11) Retail enterprise tax credit. A retail enterprise, not eligible to claim the credit under paragraph one of this subsection, but eligible to claim the credit allowable under section thirty-eight of the internal revenue code pursuant solely to the provisions of subparagraph (E) of paragraph one of subsection (a) of section forty-eight of such code, shall be allowed a credit as hereinafter computed. The amount of the credit shall be the percentage appearing in paragraph one of this subsection for the periods described therein for the amount of qualified rehabilitation expenditures, as defined in subsection (g) of section forty-eight of such code, paid or incurred with respect to a qualified

rehabilitated building, as defined in such subsection (g), located in this state and such expenditures shall be further limited to only the portion thereof paid or incurred with respect to that part of a qualified rehabilitated building employed by such taxpayer in the retail sales activity of such retail enterprise. For the purposes of this subsection, the term "retail enterprise" means a taxpayer which is: (A) a registered vendor under article twenty-eight of this chapter, (B) primarily engaged in the retail sale, as the term "retail sale" is defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of this chapter, of tangible personal property, and (C) otherwise eligible for the credit allowed pursuant to section thirty-eight of the internal revenue code.

(12) Rehabilitation credit for historic barns. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be twenty-five percent of the taxpayer's qualified rehabilitation expenditures paid or incurred within the five years immediately preceding the year in which such tax credit shall be applied with respect to any barn located in this state which qualifies as an historic barn pursuant to subdivision five of section four hundred eighty-three-b of the real property tax law. For purposes of this paragraph, the term "barn" means a building that is or was used as an agricultural facility or for purposes related to agriculture. Provided, however, such qualified rehabilitation expenditures shall not include any such expenditures which are included, directly or indirectly, in the computation of a credit claimed by the taxpayer pursuant to paragraph one of this subsection. Provided further that no rehabilitation credit shall be allowed for any rehabilitation of a barn which, immediately prior to the commencement of such rehabilitation, was used for residential purposes, or which converts a barn not suitable for residential purposes into one which is so suitable, nor shall a rehabilitation credit be allowed for any rehabilitation that materially alters the historic appearance of the barn.

(13)(A)(i) If a taxpayer is required by paragraph seven of this subsection to add back a portion of the credit taken because property was destroyed or ceased to be in qualified use as a direct result of the September eleventh, two thousand one terrorist attacks, such taxpayer

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

(ii) The taxpayer's total employment number shall include all employees of the taxpayer employed full-time by the taxpayer in the state. The average total employment number for the recapture event taxable year and the two taxable years immediately preceding the recapture event taxable year shall be computed by determining the taxpayer's total employment number on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during the applicable taxable years, adding together the number of such individuals determined to be so employed on each of such dates and dividing the sum so obtained by the number of such dates occurring within such applicable taxable years. However, in

the case of the taxable year which included September eleventh, two thousand one, the average total employment number for such taxable year shall be determined by using the total employment number on September first, two thousand one in lieu of September thirtieth, two thousand one and, if such taxable year included December thirty-first, two thousand one, by excluding the total employment number on December thirty-first, two thousand one.

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

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

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

(a-1) Employment incentive credit (EIC). (1)(A) Where a taxpayer is allowed a credit under subsection (a) of this section, other than at the optional rate applicable to research and development property, the

taxpayer shall be allowed a credit for each of the two years next succeeding the taxable year for which the credit under such subsection (a) is allowed with respect to such property, whether or not deductible in such taxable year or in subsequent taxable years pursuant to paragraph five of subsection (a) of this section. Provided, however, that the credit allowable under this subsection for any taxable year shall be allowed only if the average number of employees during such taxable year is at least one hundred one percent of the average number of employees during the employment base year. The employment base year shall be the taxable year immediately preceding the taxable year for which the credit under such subsection (a) is allowed except that in the case of a new business, the employment base year shall be the taxable year in which the credit under such subsection (a) is allowed.

(B) The amount of the credit allowed under this subsection shall be as set forth in the following table:

Average number of employees during the taxable year expressed as a percentage of average number of employees in employment base year:	Credit allowed under this subsection expressed as a percentage of the applicable investment credit base:
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Less than 102%	1.5%
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at least 102% and less than 103%	2%
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at least 103%	2.5%
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(2) The average number of employees in a taxable year shall be computed by ascertaining the number of employees within the state employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in the taxable year, by adding together the number of employees ascertained on each of such dates and dividing the sum so obtained by the number of such abovementioned dates occurring within the taxable year. For the purposes of this subsection, the term "employees within the state" shall not include, except with respect to the employment base year, any employee with respect to whom a credit provided for under subsection (k) of this section is claimed for the taxable year, based on employment within a zone equivalent area designated as such pursuant to

article eighteen-B of the general municipal law.

(3) If the amount of credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess allowed for a taxable year may be carried over to the ten taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of carrying over any such excess, a taxpayer who qualifies as an owner of a new business for purposes of paragraph ten of subsection (a) of this section may, at his or her option, receive such excess as a refund. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(a-2) Hire a vet credit. (1) Allowance of credit. For taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand twenty-nine, a taxpayer shall be allowed a credit, to be computed as provided in this subsection, against the tax imposed by this article, for hiring and employing, for not less than twelve continuous and uninterrupted months (hereinafter referred to as the twelve-month period) in a full-time or part-time position, a qualified veteran within the state. The taxpayer may claim the credit in the year in which the qualified veteran completes the twelve-month period of employment by the taxpayer. If the taxpayer claims the credit allowed under this subsection, the taxpayer may not use the hiring of a qualified veteran that is the basis for this credit in the basis of any other credit allowed under this article.

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

(A) who served on active duty in the United States army, navy, air force, space force, marine corps, coast guard or the reserves thereof, or who served in active military service of the United States as a member of the army national guard, air national guard, New York guard or New York naval militia, or who served in the active uniformed services of the United States as a member of the commissioned corps of the national oceanic and atmospheric administration or the commissioned corps of the United States public health service; who (i) was released from active duty by general or honorable discharge, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or

dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service;

(B) who commences employment by the qualified taxpayer on or after January first, two thousand fourteen, and before January first, two thousand twenty-eight; and

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

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

(4) Amount of credit. The amount of the credit shall be fifteen percent of the total amount of wages paid to the qualified veteran during the veteran's first twelve-month period of employment. Provided, however, that, if the qualified veteran is a disabled veteran, as defined in paragraph (b) of subdivision one of section eighty-five of the civil service law, the amount of the credit shall be twenty percent of the total amount of wages paid to the qualified veteran during the veteran's first twelve-month period of employment. The credit allowed pursuant to this subsection shall not exceed in any taxable year: (i) fifteen thousand dollars for any qualified veteran, other than a disabled veteran, employed in a full-time position for one thousand eight hundred twenty or more hours in one twelve-month period, (ii) twenty thousand dollars for any qualified veteran who is a disabled veteran employed in a full-time position for one thousand eight hundred twenty or more hours in one twelve-month period, (iii) seven thousand five hundred dollars for any qualified veteran, other than a disabled veteran, employed in a part-time position for at least one thousand forty hours but not more than one thousand eight hundred nineteen hours in one twelve-month period, and (iv) ten thousand dollars for any qualified veteran who is a disabled veteran employed in a part-time position for at least one thousand forty hours but not more than one thousand eight hundred nineteen hours in one twelve-month period.

(5) Carryover. If the amount of credit allowable under this subsection

for any taxable year exceeds the taxpayer's tax for such year, any amount of credit not deductible in such taxable year may be carried over to the following three years and may be deducted from the taxpayer's tax for such year or years.

(b) Household credit. (1) A household credit shall be allowed against the tax determined under subsections (a) through (d) of section six hundred one of this article. The credit, computed as described in paragraph two of this subsection, shall not exceed the tax determined under subsections (a) through (d) of section six hundred one for the taxable year, reduced by the credits permitted under sections six hundred twenty and six hundred twenty-one of this article.

(2) (A) For any individual who is not married nor the head of a household nor a surviving spouse, the amount of the credit allowed pursuant to this subsection for taxable years beginning on or after January first, nineteen hundred eighty-six shall be determined in accordance with the following table:

If household gross income is	The credit shall be
Not over \$5,000	\$75.00
Over \$5,000 but not over \$6,000	60.00
Over \$6,000 but not over \$7,000	50.00
Over \$7,000 but not over \$20,000	45.00
Over \$20,000 but not over \$25,000	40.00
Over \$25,000 but not over \$28,000	20.00

(B) For any husband and wife, head of a household, or surviving spouse, the amount of the credit allowed pursuant to this subsection for taxable years beginning on or after January first, nineteen hundred eighty-six shall be determined in accordance with the following table:

If household gross income is	The credit shall be
Not over \$5,000	\$90.00 plus an amount equal to \$15.00 multiplied by a number which is one less than the number of exemptions for which the taxpayer (or in the case of a husband and wife, taxpayers) is entitled to a deduction for the taxable year for

	federal income tax purposes under subsections (b) and (c) of section one hundred fifty-one of the internal revenue code
Over \$5,000 but not over \$6,000	\$75.00 plus such an amount
Over \$6,000 but not over \$7,000	\$65.00 plus such an amount
Over \$7,000 but not over \$20,000	\$60.00 plus such an amount
Over \$20,000 but not over \$22,000	\$60.00 plus an amount equal to \$10.00 multiplied by a number which is one less than the number of exemptions for which the taxpayer (or in the case of a husband and wife, taxpayers) is entitled to a deduction for the taxable year for federal income tax purposes under subsections (b) and (c) of section one hundred fifty-one of the internal revenue code
Over \$22,000 but not over \$25,000	\$50.00 plus such an amount
Over \$25,000 but not over \$28,000	\$40.00 plus an amount equal to \$5.00 multiplied by a number which is one less than the number of exemptions for which the taxpayer (or in the case of a husband and wife, taxpayers) is entitled to a deduction for the taxable year for federal income tax purposes under subsections (b) and (c) of section one hundred fifty-one of the internal revenue code
Over \$28,000 but not over \$32,000	\$20.00 plus such an amount

(3) For the purposes of this subsection:

(A) "Household gross income" shall mean the aggregate federal adjusted gross income of a household, as the term household is defined in subparagraph (B) of this paragraph, for the taxable year.

(B) "Household" means a husband and wife, a head of household, a surviving spouse, or an individual who is not married nor the head of a

household nor a surviving spouse nor a taxpayer with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(C) "Household gross income of a husband and wife" shall be the aggregate of their federal adjusted gross incomes for the taxable year irrespective of whether joint or separate New York income tax returns are filed. Provided, however, that a husband or wife who is required to file a separate New York income tax return shall be permitted one-half the credit otherwise allowed his or her household, except as limited by paragraph one of this subsection.

(c) Credit for certain household and dependent care services necessary for gainful employment. (1) For taxable years beginning before January first, two thousand twenty-six, a taxpayer shall be allowed a credit as provided herein equal to the applicable percentage of the credit allowable under section twenty-one of the internal revenue code for the same taxable year (without regard to whether the taxpayer in fact claimed the credit under such section twenty-one for such taxable year). The applicable percentage shall be the sum of (i) twenty percent and (ii) a multiplier multiplied by a fraction. For taxable years beginning in nineteen hundred ninety-six and nineteen hundred ninety-seven, the numerator of such fraction shall be the lesser of (i) four thousand dollars or (ii) fourteen thousand dollars less the New York adjusted gross income for the taxable year, provided, however, the numerator shall not be less than zero. For the taxable year beginning in nineteen hundred ninety-eight, the numerator of such fraction shall be the lesser of (i) thirteen thousand dollars or (ii) thirty thousand dollars less the New York adjusted gross income for the taxable year, provided, however, the numerator shall not be less than zero. For taxable years beginning in nineteen hundred ninety-nine, the numerator of such fraction shall be the lesser of (i) fifteen thousand dollars or (ii) fifty thousand dollars less the New York adjusted gross income for the taxable year, provided, however, the numerator shall not be less than zero. For taxable years beginning after nineteen hundred ninety-nine, the numerator of such fraction shall be the lesser of (i) fifteen thousand dollars or (ii) sixty-five thousand dollars less the New York adjusted gross income for the taxable year, provided, however, the

numerator shall not be less than zero. The denominator of such fraction shall be four thousand dollars for taxable years beginning in nineteen hundred ninety-six and nineteen hundred ninety-seven, thirteen thousand dollars for the taxable year beginning in nineteen hundred ninety-eight, and fifteen thousand dollars for taxable years beginning after nineteen hundred ninety-eight. The multiplier shall be ten percent for taxable years beginning in nineteen hundred ninety-six, forty percent for taxable years beginning in nineteen hundred ninety-seven, and eighty percent for taxable years beginning after nineteen hundred ninety-seven. Provided, however, for taxable years beginning after nineteen hundred ninety-nine, for a person whose New York adjusted gross income is less than forty thousand dollars, such applicable percentage shall be equal to (i) one hundred percent, plus (ii) ten percent multiplied by a fraction whose numerator shall be the lesser of (i) fifteen thousand dollars or (ii) forty thousand dollars less the New York adjusted gross income for the taxable year, provided such numerator shall not be less than zero, and whose denominator shall be fifteen thousand dollars. Provided, further, that if the reversion event, as defined in this paragraph, occurs, the applicable percentage shall, for taxable years ending on or after the date on which the reversion event occurred, be determined using the rules specified in this paragraph applicable to taxable years beginning in nineteen hundred ninety-nine. The reversion event shall be deemed to have occurred on the date on which federal action, including but not limited to, administrative, statutory or regulatory changes, materially reduces or eliminates New York state's allocation of the federal temporary assistance for needy families block grant, or materially reduces the ability of the state to spend federal temporary assistance for needy families block grant funds for the credit for certain household and dependent care services necessary for gainful employment or to apply state general fund spending on the credit for certain household and dependent care services necessary for gainful employment toward the temporary assistance for needy families block grant maintenance of effort requirement, and the commissioner of the office of temporary and disability assistance shall certify the date of such event to the commissioner, the director of the division of the budget, the speaker of the assembly and the temporary president of the senate.

(1-a) For taxable years beginning after two thousand seventeen, for a taxpayer with New York adjusted gross income of at least fifty thousand dollars but less than one hundred fifty thousand dollars, the applicable percentage shall be the applicable percentage otherwise computed under paragraph one of this subsection multiplied by a factor as follows:

If New York adjusted gross

income is:

The factor is:

At least \$50,000 and less

than \$55,000

1.1682

At least \$55,000 and less

than \$60,000

1.2733

At least \$60,000 and less

than \$65,000

2.322

At least \$65,000 and less

than \$150,000

3.000

(1-b) Notwithstanding anything in this subsection to the contrary, a taxpayer shall be allowed a credit as provided in this subsection equal to the applicable percentage of the credit allowable under section twenty-one of the internal revenue code for the same taxable year (without regard to whether the taxpayer in fact claimed the credit under such section twenty-one for such taxable year) that would have been allowed absent the application of section 21(c) of such code for taxpayers with more than two qualifying individuals, provided however, that the credit shall be calculated as if the dollar limit on amount creditable shall not exceed seven thousand five hundred dollars if there are three qualifying individuals, eight thousand five hundred dollars if there are four qualifying individuals, and nine thousand dollars if

there are five or more qualifying individuals.

(2) Residents. In the case of a resident taxpayer, the credit under this subsection shall be allowed against the taxes imposed by this article for the taxable year reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess.

(3) Nonresidents. In the case of a nonresident taxpayer, the credit under this subsection shall be allowed against the tax determined under subsections (a) through (d) of section six hundred one. The amount of the credit shall not exceed the tax determined under such subsections for the taxable year reduced by the credit permitted under subsection (b) of this section.

(4) Part-year residents. In the case of a part-year resident taxpayer, the credit under this subsection shall be allowed against the tax determined under subsections (a) through (d) of section six hundred one reduced by the credit permitted under subsection (b) of this section, and any excess credit after such application shall be allowed against the tax imposed by section six hundred three. Any remaining excess, after such application, shall be refunded as provided in paragraph two hereof, provided, however, that any overpayment under such paragraph shall be limited to the amount of the remaining excess multiplied by a fraction, the numerator of which is federal adjusted gross income for the period of residence, computed as if the taxable year for federal income tax purposes were limited to the period of residence, and the denominator of which is federal adjusted gross income for the taxable year.

(5) In the case of a husband and wife who file a joint federal return, but who are required to determine their New York taxes separately, the credit allowed pursuant to this subsection may only be applied against the tax imposed on the spouse with the lower taxable income, computed without regard to such credit. In the case of a husband and wife who are not required to file a federal return, the credit under this subsection shall be allowed only if such taxpayers file a joint New York income tax return.

(c-1) Empire state child credit. (1) For taxable years beginning

before January first, two thousand twenty-five, and taxable years beginning on or after January first, two thousand twenty-eight, a resident taxpayer shall be allowed a credit as provided herein equal to the greater of one hundred dollars times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under section twenty-four of the internal revenue code for the same taxable year for each qualifying child. Provided, however, in the case of a taxpayer whose federal adjusted gross income exceeds the applicable threshold amount set forth by section 24(b)(2) of the Internal Revenue Code, the credit shall only be equal to the applicable percentage of the child tax credit allowed the taxpayer under section 24 of the Internal Revenue Code for each qualifying child. For the purposes of this subsection, a qualifying child shall be a child who meets the definition of qualified child under section 24(c) of the internal revenue code. The applicable percentage shall be thirty-three percent. For purposes of this subsection, any reference to section 24 of the Internal Revenue Code shall be a reference to such section as it existed immediately prior to the enactment of Public Law 115-97.

(1-a) (A) For taxable years beginning on and after January first, two thousand twenty-five, and before January first, two thousand twenty-six, a resident taxpayer shall be allowed a credit as provided herein, equal to the sum of:

(i) one thousand dollars times the number of qualifying children of the taxpayer aged three or younger, and

(ii) three hundred thirty dollars times the number of qualifying children of the taxpayer who have attained age four and not yet attained age seventeen.

(B) For taxable years beginning on and after January first, two thousand twenty-six, and before January first, two thousand twenty-eight, a resident taxpayer shall be allowed a credit as provided herein, equal to the sum of:

(i) one thousand dollars times the number of qualifying children of the taxpayer aged three or younger, and

(ii) five hundred dollars times the number of qualifying children of the taxpayer who have attained age four and not yet attained age seventeen.

(C) The amount of the credit allowable under subparagraphs (A) and (B) of this paragraph shall be reduced (but not below zero) by sixteen dollars and fifty cents for each one thousand dollars by which the taxpayer's federal adjusted gross income exceeds the threshold amount. For the purposes of this subparagraph, the term "threshold amount" shall mean: (i) one hundred ten thousand dollars in the case of married taxpayers filing jointly; (ii) seventy-five thousand dollars in the case of a taxpayer filing as single, head of household, or qualified surviving spouse; and (iii) fifty-five thousand dollars in the case of a married taxpayer filing a separate return.

(D) For the purposes of this paragraph, a qualifying child shall be an individual who: (i) is a child, sibling, or stepsibling of the taxpayer, or a descendent of any such relative; (ii) has the same principal place of abode as the taxpayer for more than one-half of the taxable year; (iii) has not attained age seventeen; (iv) has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins; (v) has not filed a joint return (other than only for a claim of refund) with the individual's spouse under section six hundred fifty-one of this article for the taxable year; and (vi) is a citizen or national of the United States, or an individual with an individual taxpayer identification number issued by the internal revenue service.

(E) For the purposes of this paragraph, the term "child" shall mean an individual who is the offspring or stepchild of the taxpayer, or an eligible foster child of the taxpayer, or a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer.

(F) (i) Except as provided in subparagraph (C) of this paragraph, if an individual may be claimed as a qualifying child by two or more taxpayers for a taxable year, such individual shall be treated as the qualifying child of the taxpayer who is: (I) a parent of the individual, or (II) if subclause (I) does not apply, the taxpayer with the highest federal adjusted gross income for such taxable year.

(ii) If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of: (I) the parent with whom the child resided for the longest period of time during the taxable year, or (II) if the child resides with both

parents for the same amount of time during such taxable year, the parent with the highest federal adjusted gross income who files a return pursuant to section six hundred fifty-one of this article.

(iii) If the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer, but only if the federal adjusted gross income of such taxpayer is higher than the highest federal adjusted gross income of any parent of the individual, regardless of a requirement to file a return pursuant to section six hundred fifty-one of this article.

(2) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(3) In the case of a husband and wife who file a joint federal return, but who are required to determine their New York taxes separately, the credit allowed pursuant to this subsection may be applied against the tax imposed of either or divided between them as they may elect.

(4) (A) For tax year two thousand twenty-one, the commissioner shall issue a payment of a supplemental empire state child credit in the amount of (i) one hundred percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was less than ten thousand dollars; (ii) seventy-five percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was greater than or equal to ten thousand dollars but less than twenty-five thousand dollars; (iii) fifty percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was greater than or equal to twenty-five thousand dollars but less than fifty thousand dollars; and (iv) twenty-five percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was greater than or equal to fifty thousand dollars. Provided, however, that no payment shall be issued if it is less than twenty-five dollars.

(B) The supplemental payment pursuant to this paragraph will be

allowed to taxpayers who timely filed returns pursuant to section six hundred fifty-one of this article, determined with regard to extensions pursuant to section six hundred fifty-seven of this article.

(5) (A) For tax year two thousand twenty-three, the commissioner shall issue a payment of a supplemental empire state child credit in the amount of (i) one hundred percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was less than ten thousand dollars; (ii) seventy-five percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was greater than or equal to ten thousand dollars but less than twenty-five thousand dollars; (iii) fifty percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was greater than or equal to twenty-five thousand dollars but less than fifty thousand dollars; and (iv) twenty-five percent of the empire state child credit calculated and allowed pursuant to this subsection to taxpayers whose federal adjusted gross income was greater than or equal to fifty thousand dollars. Provided, however, that no payment shall be issued if it is less than twenty-five dollars.

(B) The supplemental payment pursuant to this paragraph shall be allowed to taxpayers who timely filed returns pursuant to section six hundred fifty-one of this article, determined with regard to extensions pursuant to section six hundred fifty-seven of this article.

(c-2) New York state child and dependent care credit. (1) For taxable years beginning on or after January first, two thousand twenty-six, an eligible taxpayer shall be allowed a credit as provided herein to enable the eligible taxpayer to be gainfully employed or a full-time student at an educational institution for any period of the taxable year. If the amount of the credit allowed under this subsection for any taxable year shall exceed the eligible taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(2) For the purposes of this subsection:

(A) "Eligible taxpayer" shall mean a resident individual as defined in paragraph one of subsection (b) of section six hundred five of this

article who, during the taxable year: (i) is not a dependent of another taxpayer pursuant to section one hundred fifty-two of the internal revenue code; and (ii) is not a resident married individual filing a separate return unless such individual meets the conditions in paragraph four of subdivision (e) of section twenty-one of the internal revenue code. Provided, however, where married individuals file a joint federal return, but are required to determine their New York taxes separately pursuant to subsection (b) of section six hundred fifty-one of this article, the credit allowed pursuant to this subsection may only be applied against the tax imposed on the spouse with the lower New York adjusted gross income.

(B) "Qualifying individual" shall mean an individual who: (i) is under the age of thirteen at the close of the taxable year or is physically or mentally incapable of caring for themselves during the taxable year; (ii) resides with the eligible taxpayer for more than one-half of the taxable year; and (iii) is claimed as a dependent pursuant to section one hundred fifty-two of the internal revenue code, or could otherwise be claimed as a dependent. Provided, a qualifying individual shall also include an individual where a noncustodial parent claims such individual under subsection (e) of section one hundred fifty-two of the internal revenue code or the individual is the eligible taxpayer's spouse who is physically or mentally incapable of caring for themselves during the taxable year and resides with the eligible taxpayer for more than one-half of the taxable year.

(C) "Earned income" shall mean the wages, salaries, tips and other employee compensation, and those items of gross income which are includible in the computation of net earnings from self-employment.

(D) (i) "Qualifying expenses" shall mean the sum of the amount incurred and paid in the taxable year directly by an eligible taxpayer for: a. services provided in and about the eligible taxpayer's residence to provide care for any qualifying individual, including such expenses for the room and board of any such caregiver; and b. non-overnight services provided outside of the eligible taxpayer's residence to provide care for any qualifying individual; provided, however, that amounts incurred or paid for which the primary purpose is educational shall not be included.

(ii) Provided, however, "qualifying expenses" shall not include: a.

any amounts paid whereby the taxpayer receives reimbursement or are paid from funds provided by a government entity, dependent care account, or other third party; b. any amounts paid to a dependent of the taxpayer for which the taxpayer or the taxpayer's spouse is entitled to a deduction for the taxable year under subsection (c) of section one hundred fifty-one of the internal revenue code; or c. any amounts paid to a child of the taxpayer as defined in paragraph one of subsection (f) of section one hundred fifty-two of the internal revenue code who has not attained the age of nineteen at the close of the taxable year.

(iii) For the purposes of the credit provided pursuant to this subsection, an eligible taxpayer's qualifying expenses shall not exceed:

a. three thousand dollars, in the case of an eligible taxpayer with one qualifying individual;

b. six thousand dollars, in the case of an eligible taxpayer with two qualifying individuals;

c. seven thousand five hundred dollars, in the case of an eligible taxpayer with three qualifying individuals;

d. eight thousand five hundred dollars, in the case of an eligible taxpayer with four qualifying individuals; and

e. nine thousand dollars, in the case of an eligible taxpayer with five or more qualifying individuals.

Provided, further, that an eligible taxpayer's qualifying expenses shall not exceed such eligible taxpayer's earned income as defined in subparagraph (C) of this paragraph, or in the case of a married eligible taxpayer filing a joint return, the lesser of the earned income of each spouse determined separately.

(E) "Applicable percentage" shall mean: (i) fifty-five percent in the case of an eligible taxpayer with a New York adjusted gross income determined pursuant to section six hundred twelve of this article of fifteen thousand dollars or less; or (ii) fifty-five percent reduced by twenty-five hundred thousandths of a percentage point for each dollar of

an eligible taxpayer's New York adjusted gross income determined pursuant to section six hundred twelve of this article in excess of fifteen thousand dollars. Provided, however, that the applicable percentage for an eligible taxpayer shall not be reduced below four percent.

(3) The amount of the credit allowed to an eligible taxpayer under this subsection shall be the product of the eligible taxpayer's qualifying expenses determined pursuant to subparagraph (D) of paragraph two of this subsection and the applicable percentage determined pursuant to subparagraph (E) of paragraph two of this subsection. Provided, however, the credit allowed under this subsection shall be reduced by twenty dollars for each one thousand dollars by which the eligible taxpayer's New York adjusted gross income determined pursuant to section six hundred twelve of this article exceeds seven hundred fifty thousand dollars.

(4) To be eligible for the credit provided by this subsection, an eligible taxpayer shall provide the following information to the satisfaction of the commissioner: (i) the amount of qualifying expenses; (ii) identifying information related to the care provider; (iii) identifying information related to the qualifying individual for whom the expenses were incurred; and (iv) any other information as required.

(5) Any references to the internal revenue code in this subsection shall be to the internal revenue code as it existed prior to January first, two thousand twenty-five.

(d) Earned income credit. (1) General. A taxpayer shall be allowed a credit as provided herein equal to (i) the applicable percentage of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, (ii) reduced by the credit permitted under subsection (b) of this section.

The applicable percentage shall be (i) seven and one-half percent for taxable years beginning in nineteen hundred ninety-four, (ii) ten percent for taxable years beginning in nineteen hundred ninety-five, (iii) twenty percent for taxable years beginning after nineteen hundred ninety-five and before two thousand, (iv) twenty-two and one-half percent for taxable years beginning in two thousand, (v) twenty-five percent for taxable years beginning in two thousand one, (vi)

twenty-seven and one-half percent for taxable years beginning in two thousand two, and (vii) thirty percent for taxable years beginning in two thousand three and thereafter. Provided, however, that if the reversion event, as defined in this paragraph, occurs, the applicable percentage shall be twenty percent for taxable years ending on or after the date on which the reversion event occurred. The reversion event shall be deemed to have occurred on the date on which federal action, including but not limited to, administrative, statutory or regulatory changes, materially reduces or eliminates New York state's allocation of the federal temporary assistance for needy families block grant, or materially reduces the ability of the state to spend federal temporary assistance for needy families block grant funds for the earned income credit or to apply state general fund spending on the earned income credit toward the temporary assistance for needy families block grant maintenance of effort requirement, and the commissioner of the office of temporary and disability assistance shall certify the date of such event to the commissioner of taxation and finance, the director of the division of the budget, the speaker of the assembly and the temporary president of the senate.

(2) Residents. In the case of a resident taxpayer, the credit under this subsection shall be allowed against the taxes imposed by this article for the taxable year reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess.

(3) Nonresidents. In the case of a nonresident taxpayer, the credit under this subsection shall be allowed against the tax determined under subsections (a) through (d) of section six hundred one. The amount of the credit shall not exceed the tax determined under such subsections for the taxable year reduced by the credits permitted under subsections (b), (c) and (m) of this section.

(4) Part-year residents. In the case of a part-year resident taxpayer, the credit under this subsection shall be allowed against the tax determined under subsections (a) through (d) of section six hundred one reduced by the credits permitted under subsections (b), (c) and (m) of this section, and any excess credit after such application shall be

allowed against the tax imposed by section six hundred three. Any remaining excess, after such application, shall be refunded as provided in paragraph two hereof, provided, however, that any overpayment under such paragraph shall be limited to the amount of the remaining excess multiplied by a fraction, the numerator of which is federal adjusted gross income for the period of residence, computed as if the taxable year for federal income tax purposes were limited to the period of residence, and the denominator of which is federal adjusted gross income for the taxable year.

(5) Husband and wife. In the case of a husband and wife who file a joint federal return but who are required to determine their New York taxes separately, the credit allowed pursuant to this subsection may be applied against the tax of either or divided between them as they may elect.

(6) Notification. (A) The commissioner shall periodically, but not less than every three years, make efforts to alert taxpayers that may be currently eligible to receive the credit provided under this subsection, and the credit provided under any local law enacted pursuant to subsection (f) of section thirteen hundred ten of this chapter, as to their potential eligibility. In making the determination of whether a taxpayer may be eligible for such credit, the commissioner shall use such data as may be appropriate and available, including, but not limited to, data available from the United States Department of Treasury, Internal Revenue Service and New York state income tax returns for preceding tax years.

(B) If the department determines that the taxpayer is eligible to receive the credit provided under this subsection but has not claimed such credit on his or her return, the department shall compute the taxpayer's liability and allow the credit, and, if applicable, issue any refund for the allowable credit amount provided under this subsection. Any refund paid pursuant to this subparagraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(7) Reports. The commissioner shall prepare a preliminary written report after July thirty-first and a final written report after December thirty-first of each calendar year, which shall contain statistical

information regarding the credits granted on or before such dates under this subsection, and under any local law enacted pursuant to subsection (f) of section thirteen hundred ten of this chapter, during such calendar year. Copies of these reports shall be submitted by such commissioner to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee and the chairman of the assembly ways and means committee within sixty days of July thirty-first with respect to the preliminary report, and within forty-five days of December thirty-first with respect to the final report, and copies of such reports with respect to credits under any local law enacted pursuant to subsection (f) of section thirteen hundred ten of this chapter shall be submitted in addition to the mayor and the speaker of the council of the city where such a local law is in effect. Such reports shall contain, but need not be limited to, the number of credits and the average amount of such credits allowed; and of those, the number of credits and the average amount of such credits allowed to taxpayers in each county; and of those, the number of credits and the average amount of such credits allowed to taxpayers whose earned income falls within ranges, determined by the commissioner, of not more than four thousand dollars; and of those, the number of credits and the average amount of such credits allowed to taxpayers who file under the different statuses set forth in subsections (a), (b) and (c) of section six hundred one of this part; and of those, the number of credits and the average amount of such credits allowed to taxpayers whose number of qualifying children falls within the categories set forth in such section thirty-two of the internal revenue code.

(8) For tax year two thousand twenty-one, the commissioner shall issue a payment of a supplemental earned income tax credit to resident taxpayers in the amount of twenty-five percent of the earned income tax credit calculated and allowed pursuant to this subsection. Such payment will be allowed to resident taxpayers who timely filed returns pursuant to section six hundred fifty-one of this article, determined with regard to extensions pursuant to section six hundred fifty-seven of this article. Provided, however, that no payment shall be issued if it is less than twenty-five dollars.

(d-1) Enhanced earned income tax credit. (1) A taxpayer described in paragraph two of this subsection shall be allowed a credit equal to the

greater of:

(A) twenty percent of the amount of the earned income tax credit that would have been allowed to the taxpayer under section 32 of the internal revenue code, absent the application of section 32(b)(2)(B) of such code, if the child or children described in subparagraph (C) of paragraph two of this subsection satisfied the requirements for a qualifying child set forth in section 32(c)(3) of such code, provided however, that the credit shall be calculated as if the taxpayer had only one child; or

(B) the product of two and one-half and the amount of the earned income tax credit that would have been allowed to the taxpayer under section 32 of the internal revenue code, if the taxpayer satisfied the eligibility requirements set forth in section 32(c)(1)(A)(ii) of such code.

(2) To be allowed a credit under this subsection, a taxpayer must satisfy all of the following qualifications.

(A) The taxpayer must be a resident taxpayer.

(B) The taxpayer must have attained the age of eighteen.

(C) The taxpayer must be the parent of a minor child or children with whom the taxpayer does not reside.

(D) The taxpayer must have an order requiring him or her to make child support payments, which are payable through a support collection unit established pursuant to section one hundred eleven-h of the social services law, which order must have been in effect for at least one-half of the taxable year.

(E) The taxpayer must have paid an amount in child support in the taxable year at least equal to the amount of current child support due during the taxable year for every order requiring him or her to make child support payments.

(3) If the amount of the credit allowed under this subsection shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(4) No claim for credit under this subsection shall be allowed unless the department has verified, from information provided by the office of temporary and disability assistance, that a taxpayer has satisfied the

qualifications set forth in subparagraphs (C), (D) and (E) of paragraph two of this subsection. The office of temporary and disability assistance shall provide to the department by January fifteenth of each year information applicable for the immediately preceding tax year necessary for the department to make such verification. Such information shall be provided in the manner and form agreed upon by the department and such office. If a taxpayer's claim for a credit under this subsection is disallowed because the taxpayer has not satisfied the qualifications set forth in subparagraphs (C), (D) and (E) of paragraph two of this subsection, the taxpayer may request a review of those qualifications by the support collection unit established pursuant to section one hundred eleven-h of the social services law through which the child support payments were payable. The support collection unit shall transmit the result of that review to the office of temporary and disability assistance on a form developed by such office. Such office shall then transmit such result to the department in a manner agreed upon by the department and such office.

(5) A taxpayer shall not be allowed multiple credits under this subsection for a taxable year even if such taxpayer has more than one child or has more than one order requiring him or her to make child support payments.

(6) If a credit is allowed under this subsection and the taxpayer is also allowed a credit under subsection (d) of this section, the taxpayer shall only be allowed to claim one credit.

(7) In the report prepared pursuant to paragraph seven of subsection (d) of this section, the commissioner shall include statistical information concerning the credit allowed pursuant to this subsection. Such information shall be limited to the number of credits and the average amount of such credits allowed; and of those, the number of credits and the average amounts of such credits allowed to taxpayers in each county.

(8) In a report prepared by the commissioner and submitted to the office of temporary and disability assistance, the department shall include information concerning the credit allowed pursuant to this subsection indicating whether or not taxpayers identified by the office of temporary and disability assistance pursuant to paragraph four of this subsection filed an income tax return, filed for a credit, received

a credit, and the amount of any such credit. Any individual taxpayer information furnished by the department pursuant to this section shall be deemed confidential and may not be disclosed to any third party and the office of temporary and disability assistance is prohibited from using the individual taxpayer information except for the purpose of analyzing the impact of the credit and its effect on child support payments.

(9) For tax year two thousand twenty-one, the commissioner shall issue a payment of a supplemental enhanced earned income tax credit in the amount of twenty-five percent of the enhanced earned income tax credit calculated and allowed pursuant to this subsection. Such payment will be allowed to taxpayers who timely filed returns pursuant to section six hundred fifty-one of this article, determined with regard to extensions pursuant to section six hundred fifty-seven of this article. Provided, however, that no payment shall be issued if it is less than twenty-five dollars.

(e) Real property tax circuit breaker credit. (1) For purposes of this subsection:

(A) (i) For taxable years beginning before January first, two thousand twenty-five, "qualified taxpayer" means a resident individual of the state who has occupied the same residence for six months or more of the taxable year, and is required or chooses to file a return under this article.

(ii) For taxable years beginning on or after January first, two thousand twenty-five, "qualified taxpayer" means a resident individual of the state who has occupied the same residence for six months or more of the taxable year, and has qualifying real property taxes as defined in clause (ii) of subparagraph (E) of this paragraph, or a real property tax equivalent as defined in clause (ii) of subparagraph (F) of this paragraph, in excess of the following percentages of federal adjusted gross income:

If federal adjusted gross income for the taxable year is:	Percentage
\$3,000 or less	3 1/2
Over \$3,000 but not over \$5,000	4
Over \$5,000 but not over \$7,000	4 1/2
Over \$7,000 but not over \$9,000	5

Over \$9,000 but not over \$11,000	5 1/2
Over \$11,000 but not over \$14,000	6
Over \$14,000 but not over \$18,000	6 1/2

(B) "Household" or "members of the household" means a qualified taxpayer and all other persons, not necessarily related, who have the same residence and share its furnishings, facilities and accommodations. Such terms shall not include a tenant, subtenant, roomer or boarder who is not related to the qualified taxpayer in any degree specified in subparagraphs (A) through (G) of paragraph two of subsection (d) of section one hundred fifty-two of the internal revenue code. Provided, however, no person may be a member of more than one household at one time.

(c) "Household gross income" means the aggregate adjusted gross income of all members of the household for the taxable year as reported for federal income tax purposes, or which would be reported as adjusted gross income if a federal income tax return were required to be filed, with the modifications in subsection (b) of section six hundred twelve but without the modifications in subsection (c) of such section, plus any portion of the gain from the sale or exchange of property otherwise excluded from such amount; earned income from sources without the United States excludable from federal gross income by section nine hundred eleven of the internal revenue code; support money not included in adjusted gross income; nontaxable strike benefits; supplemental security income payments; the gross amount of any pension or annuity benefits to the extent not included in such adjusted gross income (including, but not limited to, railroad retirement benefits and all payments received under the federal social security act and veterans' disability pensions); nontaxable interest received from the state of New York, its agencies, instrumentalities, public corporations, or political subdivisions (including a public corporation created pursuant to agreement or compact with another state or Canada); workers' compensation; the gross amount of "loss-of-time" insurance; and the amount of cash public assistance and relief, other than medical assistance for the needy, paid to or for the benefit of the qualified taxpayer or members of his household. Household gross income shall not include surplus foods or other relief in kind or payments made to individuals because of their status as victims of Nazi persecution as

defined in P.L. 103-286. Provided, further, household gross income shall only include all such income received by all members of the household while members of such household.

(D) "Residence" means a dwelling in this state, whether owned or rented, and so much of the land abutting it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multi-dwelling or multi-purpose building including a cooperative or condominium, and rental units within a single dwelling. Residence includes a trailer or mobile home, used exclusively for residential purposes and defined as real property pursuant to paragraph (g) of subdivision twelve of section one hundred two of the real property tax law.

(E) (i) For taxable years beginning before January first, two thousand twenty-five, "qualifying real property taxes" means all real property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied on the residence of a qualified taxpayer and paid during the taxable year less the credit claimed under subsection (n-1) of this section. In addition, for taxable years beginning after December thirty-first, nineteen hundred eighty-four, a qualified taxpayer may elect to include any additional amount that would have been levied in the absence of an exemption from real property taxation pursuant to section four hundred sixty-seven of the real property tax law. If tenant-stockholders in a cooperative housing corporation have met the requirements of section two hundred sixteen of the internal revenue code by which they are allowed a deduction for real estate taxes, the amount of taxes so allowable, or which would be allowable if the taxpayer had filed returns on a cash basis, shall be qualifying real property taxes. If a residence is owned by two or more individuals as joint tenants or tenants in common, and one or more than one individual is not a member of the household, qualifying real property taxes is that part of such taxes on the residence which reflects the ownership percentage of the qualified taxpayer and members of their household. If a residence is an integral part of a larger unit, qualifying real property taxes shall be limited to that amount of such taxes paid as may be reasonably apportioned to such residence. If a household owns and occupies two or more residences during different periods in the same taxable year, qualifying real property taxes shall

be the sum of the prorated qualifying real property taxes attributable to the household during the periods such household occupies each of such residences. If the household owns and occupies a residence for part of the taxable year and rents a residence for part of the same taxable year, it may include both the proration of qualifying real property taxes on the residence owned and the real property tax equivalent with respect to the months the residence is rented. Provided, however, for purposes of the credit allowed under this subsection, qualifying real property taxes may be included by a qualified taxpayer only to the extent that such taxpayer or the spouse of such taxpayer occupying such residence for six months or more of the taxable year owns or has owned the residence and paid such taxes.

(ii) For taxable years beginning on or after January first, two thousand twenty-five, "qualifying real property taxes" means all real property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied on the residence of a qualified taxpayer and paid during the taxable year less any school tax relief credit allowed under subsection (eee) of this section. A qualified taxpayer may elect to include any additional amount that would have been levied in the absence of an exemption from real property taxation pursuant to section four hundred sixty-seven of the real property tax law. If tenant-stockholders in a cooperative housing corporation have met the requirements of section two hundred sixteen of the internal revenue code by which they are allowed a deduction for real estate taxes, the amount of taxes so allowable, or which would be allowable if the taxpayer had filed returns on a cash basis, shall be qualifying real property taxes. If a residence is owned by two or more individuals as joint tenants or tenants in common, qualifying real property taxes is that part of such taxes on the residence which reflects the ownership percentage of the qualified taxpayer. If a residence is an integral part of a larger unit, qualifying real property taxes shall be limited to that amount of the taxes paid as may be reasonably apportioned to such residence. If a qualified taxpayer owns and occupies two or more residences during different periods in the same taxable year, qualifying real property taxes shall be the sum of the prorated qualifying real property taxes attributable to the qualified taxpayer during the periods the taxpayer occupies each of the

residences. If a qualified taxpayer owns and occupies a residence for part of the taxable year and rents a residence for part of the same taxable year, the taxpayer may include both the proration of qualifying real property taxes on the residence owned and the real property tax equivalent with respect to the months the residence is rented. Provided, however, for purposes of the credit allowed under this subsection, qualifying real property taxes may be included by a qualified taxpayer only to the extent that such taxpayer or the spouse of such taxpayer occupying such residence for six months or more of the taxable year owns or has owned the residence and paid such taxes.

(F) (i) For taxable years beginning before January first, two thousand twenty-five, "real property tax equivalent" means twenty-five percent of the adjusted rent actually paid in the taxable year by a household solely for the right of occupancy of its New York residence for the taxable year. If (I) a residence is rented to two or more individuals as cotenants, or such individuals share in the payment of a single rent for the right of occupancy of such residence, and (II) each of such individuals is a member of a different household, one or more of which individuals shares such residence, real property tax equivalent is that portion of twenty-five percent of the adjusted rent paid in the taxable year which reflects that portion of the rent attributable to the qualified taxpayer and the members of their household.

(ii) For taxable years beginning on or after January first, two thousand twenty-five, "real property tax equivalent" means twenty-five percent of the adjusted rent actually paid in the taxable year by a qualified taxpayer solely for the right of occupancy of their New York residence for the taxable year.

(G) "Adjusted rent" means rental paid for the right of occupancy of a residence, excluding charges for heat, gas, electricity, furnishings and board. Where charges for heat, gas, electricity, furnishing or board are included in rental but where such charges and the amount thereof are not separately set forth in a written rental agreement, for purposes of determining adjusted rent the qualified taxpayer shall reduce rental paid as follows:

(i) For heat, or heat and gas, deduct fifteen percent of rental paid.

(ii) For heat, gas and electricity, deduct twenty percent of rental paid.

(iii) For heat, gas, electricity and furnishings, deduct twenty-five percent of rental paid.

(iv) For heat, gas, electricity, furnishings and board, deduct fifty percent of rental paid.

If the tax commission determines that the adjusted rent shown on the return is excessive, the tax commission may reduce such rent, for purposes of the computation of the credit, to an amount substantially equivalent to rent for a comparable accommodation.

(2) (A) For taxable years beginning before January first, two thousand twenty-five, a qualified taxpayer shall be allowed a credit as provided in subparagraph (A) of paragraph three of this subsection against the taxes imposed by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced for such year under this article the qualified taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, any excess between such tax as so reduced and the amount of the credit. If a qualified taxpayer is not required to file a return pursuant to section six hundred fifty-one, a qualified taxpayer may nevertheless receive and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment the full amount of the credit, without interest.

(B) For taxable years beginning on or after January first, two thousand twenty-five, a qualified taxpayer shall be allowed a credit against the tax imposed by this article as provided for in subparagraph (B) of paragraph three of this subsection. If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. If a taxpayer is not required to file a return pursuant to section six hundred fifty-one, a qualified taxpayer may nevertheless receive and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment the full amount of the credit, without interest.

(3) Determination of credit. (A) For taxable years beginning before January first, two thousand twenty-five, (i) for qualified taxpayers who have attained the age of sixty-five years before the beginning of or

during the taxable year the amount of the credit allowable under this subsection shall be fifty percent, or in the case of a qualified taxpayer who has elected to include an additional amount pursuant to subparagraph (E) of paragraph one of this subsection, twenty-five percent, of the excess of real property taxes or the excess of real property tax equivalent determined as follows:

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the following percentage of household gross income:
----- \$3,000 or less	3 1/2
Over \$3,000 but not over \$5,000	4
Over \$5,000 but not over \$7,000	4 1/2
Over \$7,000 but not over \$9,000	5
Over \$9,000 but not over \$11,000	5 1/2
Over \$11,000 but not over \$14,000	6
Over \$14,000 but not over \$18,000	6 1/2

Notwithstanding the foregoing provisions, the maximum credit determined under this clause may not exceed the amount determined in accordance with the following table:

If household gross income for the taxable year is:	The maximum credit is:
----- \$1,000 or less	\$375
Over \$1,000 but not over \$2,000	\$358
Over \$2,000 but not over \$3,000	\$341
Over \$3,000 but not over \$4,000	\$324
Over \$4,000 but not over \$5,000	\$307
Over \$5,000 but not over \$6,000	\$290
Over \$6,000 but not over \$7,000	\$273
Over \$7,000 but not over \$8,000	\$256
Over \$8,000 but not over \$9,000	\$239
Over \$9,000 but not over \$10,000	\$222

Over \$10,000 but not over \$11,000	\$205
Over \$11,000 but not over \$12,000	\$188
Over \$12,000 but not over \$13,000	\$171
Over \$13,000 but not over \$14,000	\$154
Over \$14,000 but not over \$15,000	\$137
Over \$15,000 but not over \$16,000	\$120
Over \$16,000 but not over \$17,000	\$103
Over \$17,000 but not over \$18,000	\$ 86

(ii) for all other qualified taxpayers the amount of the credit allowable under this subsection shall be fifty percent of excess real property taxes or the excess of the real property tax equivalent determined as follows:

If household gross income for the taxable year is:	Excess real property taxes are the excess of real property tax equivalent or the excess of qualifying real property taxes over the following percentage of household gross income:
-----	-----
\$3,000 or less	3 1/2
Over \$3,000 but not over \$5,000	4
Over \$5,000 but not over \$7,000	4 1/2
Over \$7,000 but not over \$9,000	5
Over \$9,000 but not over \$11,000	5 1/2
Over \$11,000 but not over \$14,000	6
Over \$14,000 but not over \$18,000	6 1/2

Notwithstanding the foregoing provisions, the maximum credit determined under this clause may not exceed the amount determined in accordance with the following table:

If household gross income for the taxable year is:	The maximum credit is:
-----	-----
\$1,000 or less	\$75
Over \$1,000 but not over \$2,000	\$73
Over \$2,000 but not over \$3,000	\$71
Over \$3,000 but not over \$4,000	\$69

Over \$4,000 but not over \$5,000	\$67
Over \$5,000 but not over \$6,000	\$65
Over \$6,000 but not over \$7,000	\$63
Over \$7,000 but not over \$8,000	\$61
Over \$8,000 but not over \$9,000	\$59
Over \$9,000 but not over \$10,000	\$57
Over \$10,000 but not over \$11,000	\$55
Over \$11,000 but not over \$12,000	\$53
Over \$12,000 but not over \$13,000	\$51
Over \$13,000 but not over \$14,000	\$49
Over \$14,000 but not over \$15,000	\$47
Over \$15,000 but not over \$16,000	\$45
Over \$16,000 but not over \$17,000	\$43
Over \$17,000 but not over \$18,000	\$41

(B) For taxable years beginning on or after January first, two thousand twenty-five, (i) for qualified taxpayers who have attained the age of sixty-five years before the beginning of or during the taxable year or are claiming dependents as defined under section one hundred fifty-two of the internal revenue code who have attained the age of sixty-five years before the beginning of or during the taxable year, the credit allowable under this subsection shall be:

If the taxpayer's federal adjusted gross

income for the taxable year is: The credit amount is:

\$3,000 or less	\$375
Over \$3,000 but not over \$5,000	\$330
Over \$5,000 but not over \$7,000	\$300
Over \$7,000 but not over \$9,000	\$260
Over \$9,000 but not over \$11,000	\$230
Over \$11,000 but not over \$14,000	\$200
Over \$14,000 but not over \$18,000	\$150

(ii) for all other taxpayers the amount of the credit allowable under this subsection shall be:

If the taxpayer's federal adjusted gross

income for the taxable year is: The credit amount is:

\$5,000 or less	\$75
Over \$5,000 but not over \$9,000	\$70
Over \$9,000 but not over \$14,000	\$60

Over \$14,000 but not over \$18,000

\$50

(4) If a qualified taxpayer occupies a residence for a period of less than twelve months during the taxable year or occupies two or more residences during different periods in such taxable year, the credit allowed pursuant to this subsection shall be computed in such manner as the commissioner may prescribe in order to properly reflect the credit or portion thereof attributable to such residence or residences and such period or periods.

(6) (A) For taxable years beginning before January first, two thousand twenty-five, only one credit per household and per qualified taxpayer shall be allowed per taxable year under this subsection. Where two or more members of a household are able to meet the qualifications for a qualified taxpayer, the credit shall be equally divided between or among such individuals unless such individuals file with the commissioner a written agreement among such individuals setting forth a different division. Where two or more members of a household are able to meet the qualifications of a qualified taxpayer and one of them is sixty-five years of age or more, the credit which may be taken shall be the credit applicable to individuals who have attained the age of sixty-five years.

(B) For taxable years beginning on or after January first, two thousand twenty-five, only one credit per qualified taxpayer shall be allowed per taxable year under this subsection.

(C) Provided, however, where a joint income tax return has been filed pursuant to the provisions of section six hundred fifty-one by a qualified taxpayer and their spouse (or where both spouses are qualified taxpayers and have filed such joint return), the credit, or the portion of the credit if divided, to which the spouses are entitled shall be applied against the tax of both spouses and any overpayment shall be made to both spouses.

(D) Where any return required to be filed pursuant to the provisions of section six hundred fifty-one is combined with any return of tax imposed pursuant to the authority of this chapter or any other law if such tax is administered by the commissioner, the credit or the portion of the credit if divided, allowed to the qualified taxpayer may be applied by the commissioner toward any liability for the aforementioned taxes.

(7) No credit shall be granted under this subsection:

(A) (i) For taxable years beginning before January first, two thousand twenty-five, if household gross income for the taxable year exceeds eighteen thousand dollars.

(ii) For taxable years beginning on or after January first, two thousand twenty-five, if the taxpayer's federal adjusted gross income exceeds eighteen thousand dollars.

(B) To a property owner unless: (i) the property is used for residential purposes, (ii) not more than twenty percent of the rental income, if any, from the property is from rental for nonresidential purposes and (iii) the property is occupied as a residence in whole or in part by one or more of the owners of the property.

(C) To a property owner who owns real property, the full value of which exceeds eighty-five thousand dollars.

(D) To a tenant if the adjusted rent for the residence exceeds four hundred fifty dollars per month on average.

(E) To an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(F) With respect to a residence that is wholly exempted from real property taxation.

(G) To an individual who is not a resident individual of the state for the entire taxable year.

(8) The right to claim a credit or the portion of a credit, where such credit has been divided under this subsection, shall be personal to the qualified taxpayer and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney in fact during his lifetime.

(9) Returns. If a qualified taxpayer is not required to file a return pursuant to section six hundred fifty-one, a claim for a credit may be taken on a return filed with the commissioner, or a form prescribed by the commissioner, within three years from the time it would have been required that a return be filed pursuant to such section had the qualified taxpayer had a taxable year ending on December thirty-first. Returns under this paragraph shall be in such form as shall be prescribed by the commissioner, which shall make available such forms and instructions for filing such returns.

(10) Proof of claim. The commissioner may require a qualified taxpayer

to furnish the following information in support of their claim for credit under this subsection: federal adjusted gross income, household gross income, rent paid, name and address of owner or managing agent of the property rented, real property taxes levied or that would have been levied in the absence of an exemption from real property tax pursuant to section four hundred sixty-seven of the real property tax law, the names of members of the household and other qualifying taxpayers occupying the same residence and their identifying numbers including social security numbers, household gross income, size and nature of property claimed as residence and all other information which may be required by the commissioner to determine the credit.

(11) Administration. The provisions of this article, including the provisions of section six hundred fifty-three, six hundred fifty-eight, and six hundred fifty-nine and the provisions of part six of this article relating to procedure and administration, including the judicial review of the decisions of the tax commission, except so much of section six hundred eighty-seven which permits a claim for credit or refund to be filed after the period provided for in paragraph nine of this subsection and except sections six hundred fifty-seven, six hundred eighty-eight and six hundred ninety-six, shall apply to the provisions of this subsection in the same manner and with the same force and effect as if the language of those provisions had been incorporated in full into this subsection and had expressly referred to the credit allowed or returns filed under this subsection, except to the extent that any such provision is either inconsistent with a provision of this subsection or is not relevant to this subsection. As used in such sections and such part, the term "taxpayer" shall include a qualified taxpayer under this subsection and, notwithstanding the provisions of subsection (e) of section six hundred ninety-seven, where a qualified taxpayer has protested the denial of a claim for credit under this subsection and the time to file a petition for redetermination of a deficiency or for refund has not expired, he shall, subject to such conditions as may be set by the tax commission, receive such information (A) which is contained in any return filed under this article by a member of his household for the taxable year for which the credit is claimed, and (B) which the tax commission finds is relevant and material to the issue of whether such claim was properly denied. The tax commission shall have

the authority to promulgate such rules and regulations as may be necessary for the processing, determination and granting of credits and refunds under this subsection.

(13) Notwithstanding any other provision of this article, the credit allowed under this subsection shall be determined after the determination and application of any other credits permitted under the provisions of this article.

(14) (A) For calendar years before two thousand twenty-five, the commissioner shall prepare a preliminary written report after July thirty-first and a final written report after December thirty-first of each calendar year, which shall contain statistical information regarding the credits granted on or before such dates under this subsection during such calendar year. Copies of these reports shall be submitted by the commissioner to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee and the chair of the assembly ways and means committee within sixty days of July thirty-first with respect to the preliminary report, and within forty-five days of December thirty-first with respect to the final report. Such reports shall contain, but need not be limited to, the number of credits and the average amount of such credits allowed; and of those, the number of credits and the average amount of such credits allowed to qualified taxpayers in each county; and of those, the number of credits and the average amount of such credits allowed to qualified taxpayers whose household gross income falls within each of the household gross income ranges set forth in paragraph three of this subsection; and of those, the number of credits and the average amount of such credits allowed to qualified taxpayers whose credit amount falls within credit amount ranges set forth in twenty-five dollar increments.

(B) For calendar years beginning with two thousand twenty-five, the commissioner of taxation and finance shall prepare an annual report by September first of each such year, which shall contain statistical information regarding the credits claimed under this subsection for the second preceding taxable year. Copies of such report shall be submitted by the commissioner to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee and the chair of the assembly ways and means committee. Such

report shall contain, but need not be limited to, the number of credits and the amount of such credits allowed; and of those, the number of credits and the amount of such credits allowed to qualified taxpayers in each county; and of those, the number of credits and the amount of such credits allowed to qualified taxpayers whose federal adjusted gross income falls within each of the federal adjusted gross income ranges set forth in paragraph three of this subsection.

(e-1) Volunteer firefighters' and ambulance workers' credit. (1) For taxable years beginning on and after January first, two thousand seven, a resident taxpayer who serves as an active volunteer firefighter as defined in subdivision one of section two hundred fifteen of the general municipal law or as a volunteer ambulance worker as defined in subdivision fourteen of section two hundred nineteen-k of the general municipal law shall be allowed a credit against the tax imposed by this article equal to two hundred dollars. In order to receive this credit a volunteer firefighter or volunteer ambulance worker must have been active for the entire taxable year for which the credit is sought.

(2) If a taxpayer receives a real property tax exemption relating to such service under title two of article four of the real property tax law, such taxpayer shall not be eligible for this credit; provided, however (A) if the taxpayer receives such real property tax exemption in the two thousand seven taxable year as a result of making application therefor in a prior year or (B) if the taxpayer notifies his or her assessor in writing by December thirty-first, two thousand seven of the taxpayer's intent to discontinue such real property tax exemption by not re-applying for such real property tax exemption by the next taxable status date, such taxpayer shall be eligible for this credit for the two thousand seven taxable year.

(3) In the case of a husband and wife who file a joint return and who both individually qualify for the credit under this subsection, the amount of the credit allowed shall be four hundred dollars.

(4) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(e-2) Real property tax relief credit. (1) For purposes of this

subsection:

(A) "Qualified taxpayer" means a resident individual of the state who owned and primarily resided for six months or more of the taxable year in real property that either received the STAR exemption authorized by section four hundred twenty-five of the real property tax law or that qualified the taxpayer to receive the school tax relief credit authorized by subsection (eee) of this section.

(B) "Qualified gross income" means the adjusted gross income of the qualified taxpayer for the taxable year for federal income tax purposes and, for taxable year two thousand twenty-one computed without regard to the last sentence of subdivision (a) of section six hundred seven of this article. In computing qualified gross income, the net amount of loss reported on Federal Schedule C, D, E, or F shall not exceed three thousand dollars per schedule. In addition, the net amount of any other separate category of loss shall not exceed three thousand dollars. The aggregate amount of all losses included in computing qualified gross income shall not exceed fifteen thousand dollars.

(C) "Residence" means a dwelling in this state owned by the taxpayer and used by the taxpayer as his or her primary residence, and so much of the land abutting it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multi-dwelling or multi-purpose building including a cooperative or condominium. Residence includes a trailer or mobile home, used exclusively for residential purposes and defined as real property pursuant to paragraph (g) of subdivision twelve of section one hundred two of the real property tax law.

(D) "Qualifying real property taxes" means all real property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied by a taxing jurisdiction on the residence owned and occupied by a qualified taxpayer and paid by the qualified taxpayer during the taxable year, provided that to the extent the total amount of real property taxes so paid includes school district taxes, the amount of the school tax relief (STAR) credit claimed pursuant to subsection (eee) of this section, if any, shall be deducted from such amount.

A qualified taxpayer may elect to include any additional amount that

would have been levied by a taxing jurisdiction and paid by the qualified taxpayer in the absence of an exemption from real property taxation pursuant to section four hundred sixty-seven of the real property tax law. If tenant-stockholders in a cooperative housing corporation have met the requirements of section two hundred sixteen of the internal revenue code by which they are allowed a deduction for real estate taxes, the amount of taxes so allowable, or which would be allowable if the taxpayer had filed returns on a cash basis, shall be qualifying real property taxes. If a residence is an integral part of a larger unit, qualifying real property taxes shall be limited to that amount of such taxes paid as may be reasonably apportioned to such residence. If a taxpayer owned and occupied two residences in the state during different periods in the same taxable year, qualifying real property taxes shall be the sum of the prorated qualifying real property taxes attributable to the taxpayer during the periods such taxpayer occupied each of such residences. A taxpayer who owned and occupied a residence in the state for part of the taxable year and rented a residence in the state for part of the same taxable year, may include the proration of qualifying real property taxes on the residence owned. Provided, however, for purposes of the credit allowed under this subsection, qualifying real property taxes may be included by a qualified taxpayer only to the extent that such taxpayer or the spouse of such taxpayer occupied such residence for one hundred eighty-three days or more of the taxable year, owned the residence and paid such taxes.

(E) "Excess real property tax" means the excess of qualifying real property taxes over six percent of qualified gross income.

(2) For tax years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-four, a qualified taxpayer shall be allowed a credit as provided in paragraph three of this subsection against the taxes imposed by this article. If the credit exceeds the tax for such year under this article, the excess shall be treated as an overpayment, to be credited or refunded, without interest.

(3) Determination of credit. The credit amount allowed under this subsection shall be the product of the excess real property tax and the applicable percentage of the excess real property tax, calculated as

follows:

(A) For qualified taxpayers whose qualified gross income is seventy-five thousand dollars or less, the applicable percentage shall be fourteen percent.

(B) For qualified taxpayers whose qualified gross income is greater than seventy-five thousand dollars but less than or equal to one hundred fifty thousand dollars, the applicable percentage shall be the difference between (i) fourteen percent and (ii) five percent multiplied by a fraction, the numerator of which is the difference between the qualified taxpayer's qualified gross income as defined by this subsection and seventy-five thousand dollars, and the denominator of which is seventy-five thousand dollars.

(C) For qualified taxpayers whose qualified gross income is greater than one hundred fifty thousand dollars but less than or equal to two hundred fifty thousand dollars, the applicable percentage shall be the difference between (i) nine percent and (ii) six percent multiplied by a fraction, the numerator of which is the difference between the qualified taxpayer's qualified gross income and one hundred fifty thousand dollars, and the denominator of which is one hundred thousand dollars.

(4) No credit shall be allowed under this subsection if the amount determined pursuant to paragraph three is less than two hundred fifty dollars, provided further that if the amount determined pursuant to paragraph three is in excess of three hundred fifty dollars the taxpayer shall be allowed a credit of three hundred fifty dollars.

(5) The commissioner may prescribe that the credit under this subsection shall be determined in whole or in part by the use of tables prescribed by such commissioner. Such tables shall set forth the credit to the nearest dollar.

(6) No credit shall be granted under this subsection:

(A) To a property owner if qualified gross income for the taxable year exceeds two hundred fifty thousand dollars.

(B) To a property owner unless: (i) the property is used for residential purposes; (ii) not more than twenty percent of the rental income, if any, from the property is from rental for nonresidential purposes; and (iii) the property is occupied as a residence in whole or in part by one or more of the owners of the property.

(C) To an individual with respect to whom a deduction under subsection

(c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(D) With respect to a residence that is wholly exempted from real property taxation.

(E) To an individual who is not a resident individual of the state for the entire taxable year.

(7) In the case of a taxpayer who has itemized deductions from federal adjusted gross income, and whose federal itemized deductions include an amount for real estate taxes paid, the New York itemized deduction otherwise allowable under section six hundred fifteen of this chapter shall be reduced by the amount of the credit claimed under this subsection.

(f) Credit for the special additional mortgage recording tax. (1) For taxable years beginning before nineteen hundred eighty-eight, a taxpayer shall be allowed a credit, to be credited against the tax imposed by this article, after allowance of any other credit provided under this section and any credits permitted under sections six hundred twenty, six hundred twenty-one and six hundred thirty-five of this article. The amount of the credit shall be the amount of the special additional mortgage recording tax paid by the taxpayer pursuant to the provisions of subdivision one-a of section two hundred fifty-three of this chapter on mortgages recorded on and after January first, nineteen hundred seventy-nine. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in one or more of the counties comprising the metropolitan commuter transportation district and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in the county of Erie and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven.

(2) In no event shall the amount of the credit herein provided for be

allowed in excess of the taxpayer's tax for such year. However, if the amount of credit otherwise allowable under this subsection for any taxable year results in such excess amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(3)(A) Notwithstanding the provisions of paragraphs one and two of this subsection, for taxable years beginning after two thousand three, a taxpayer shall be allowed a credit, to be credited against the tax imposed by this article, equal to the amount of the special additional mortgage recording tax paid by the taxpayer or, in the case of a taxpayer who is a partner in a partnership, the partner's pro rata share of the amount of the special additional mortgage recording tax paid by the partnership, pursuant to the provisions of subdivision one-a of section two hundred fifty-three of this chapter on mortgages recorded on and after January first, two thousand four. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in one or more of the counties comprising the metropolitan commuter transportation district and where the mortgage is recorded on or after January first, two thousand four. Provided further, no credit shall be allowed with respect to a mortgage of real property principally improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in Erie county and where the mortgage is recorded on or after January first, two thousand four.

(B) If the amount of credit allowable under this paragraph for any taxable year exceeds the taxpayer's tax for such year, any amount of credit exceeding such tax may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. Provided further, such taxpayer may elect to treat such unused amount of credit as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article except that no interest shall be paid on such overpayment.

(g) Credit for solar and wind energy systems.

(1) A taxpayer shall be allowed a credit for taxable years beginning on or after January first, nineteen hundred eighty-one and ending before December thirty-first, nineteen hundred eighty-six against the tax imposed by this article for the purchase and installation of a solar or wind energy system by a taxpayer in his principal residence, if such residence is located within the state. The amount of the credit shall be fifty-five percent of the expenditure incurred in purchasing and installing any such system or combination thereof, but not to exceed the maximum credit of two thousand seven hundred fifty dollars.

(2) A solar or wind system is a system whose original use begins with the taxpayer; which meets the eligibility criteria, if any, prescribed by the department of taxation and finance; and which is:

(A) an active solar energy system which shall mean an arrangement or combination of components designed to provide heating, cooling, hot water or electricity through the process of collecting solar radiation, converting it to another form of energy, storing the converted energy, protecting against unnecessary dissipation and distributing the converted energy, and which requires external mechanical power for operation. This term shall not include pipes, controls, insulation or other equipment which are part of the conventional heating, cooling, insulation or electrical system of a building; nor shall it include any expenditure allocable to a swimming pool used as a storage medium;

(B) a passive solar energy system, which shall mean a system which relies upon the original or retrofitted design and elements of a building to enhance the use of natural forces including solar radiation, winds and night-time coolness to provide heating, cooling or hot water through the process of collecting solar radiation, converting it to another form of energy, storing the converted energy, protecting against unnecessary dissipation and distributing the converted energy, and which is not primarily dependent upon mechanical power for operation. This term shall not include pipes, controls, insulation or other equipment which are part of the conventional heating, cooling or insulation system of the building; nor shall it include any expenditure allocable to a swimming pool used as a storage medium; or

(C) a wind energy system, which shall mean an arrangement or combination of components, including power conditioning equipment,

designed to provide electricity or mechanical energy through the process of converting wind energy into mechanical and/or electric energy, and storing or distributing such energy.

(3) Where a solar or wind energy system is purchased and installed by a condominium management association or a cooperative housing corporation, a taxpayer who is a member of the condominium management association or who is a tenant-stockholder in the cooperative housing corporation may for the purpose of this subsection claim a proportionate share of the total expense as the expenditure for the purposes of the credit attributable to his principal residence.

(4) Where a solar or wind system is purchased and installed in a principal residence shared by two or more taxpayers the amount of the credit allowable under this subsection for each such taxpayer shall be prorated according to the percentage of the total expenditure for such system contributed by each taxpayer.

(5) To the extent that a federal income tax credit shall apply to expenditures eligible for a credit under this subsection, the credit provided in this subsection shall be reduced so that the combined credit shall not exceed fifty-five percent of such expenditures or six thousand seven hundred fifty dollars, whichever is less.

(6) If the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(7) If all or any part of the credit provided for under this subsection was allowed or carried over from a prior taxable year or years, a taxpayer shall reduce the allowable credit for additional qualifying expenditures in a subsequent tax year by the amount of the credit previously allowed or carried over; provided however that a credit previously allowed or carried over from a prior taxable year or years shall not be taken into account in determining the allowable credit for the purchase and installation of a solar or wind energy system in a subsequent principal residence.

(8) For the purpose of determining the amount of the actual expenditure incurred in purchasing and installing a solar or wind energy system, the amount of any federal, state or local grant received by the taxpayer, which was used for the purchase and/or installation of such

system and which was not included in the gross income of the taxpayer, shall not be taken into account.

(9) Notwithstanding any other provision of law, if a credit is allowed under this subsection for a renewable energy system with respect to any property, the increase in the basis of such property which would but for this subsection result from such expenditure shall be reduced by the amount of the credit allowed. When the sale or other disposition of such property results in the nonrecognition of gain under section one thousand thirty-four of the internal revenue code, a like reduction shall be made to the basis of the new residence, if such residence is located within the state.

(g-1) Solar energy system equipment credit. (1) General. An individual taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty-five percent of qualified solar energy system equipment expenditures, except as provided in subparagraph (D) of paragraph two of this subsection. This credit shall not exceed three thousand seven hundred fifty dollars for qualified solar energy equipment placed in service before September first, two thousand six, and five thousand dollars for qualified solar energy equipment placed in service on or after September first, two thousand six.

(2) Qualified solar energy system equipment expenditures. (A) The term "qualified solar energy system equipment expenditures" means expenditures for:

(i) the purchase of solar energy system equipment which is installed in connection with residential property which is (I) located in this state and (II) which is used by the taxpayer as his or her principal residence at the time the solar energy system equipment is placed in service;

(ii) the lease of solar energy system equipment under a written agreement that spans at least ten years where such equipment owned by a person other than the taxpayer is installed in connection with residential property which is (I) located in this state and (II) which is used by the taxpayer as his or her principal residence at the time the solar energy system equipment is placed in service; or

(iii) the purchase of power under a written agreement that spans at least ten years whereunder the power purchased is generated by solar energy system equipment owned by a person other than the taxpayer which

is installed in connection with residential property which is (I) located in this state and (II) which is used by the taxpayer as his or her principal residence at the time the solar energy system equipment is placed in service.

(B) Such qualified expenditures shall include expenditures for materials, labor costs properly allocable to on-site preparation, assembly and original installation, architectural and engineering services, and designs and plans directly related to the construction or installation of the solar energy system equipment.

(C) Such qualified expenditures for the purchase of solar energy system equipment shall not include interest or other finance charges.

(D) Such qualified expenditures for the lease of solar energy system equipment or the purchase of power under an agreement described in clauses (ii) or (iii) of subparagraph (A) of this paragraph shall include an amount equal to all payments made during the taxable year under such agreement. Provided, however, such credits shall only be allowed for fourteen years after the first taxable year in which such credit is allowed. Provided further, however, the twenty-five percent limitation in paragraph one of this subsection shall only apply to the total aggregate amount of all payments to be made pursuant to an agreement referenced in clauses (ii) or (iii) of subparagraph (A) of this paragraph, and shall not apply to individual payments made during a taxable year under such agreement except to the extent such limitation on an aggregate basis has been reached.

(3) Solar energy system equipment. The term "solar energy system equipment" shall mean an arrangement or combination of components utilizing solar radiation, which, when installed in a residence, produces energy designed to provide heating, cooling, hot water or electricity for use in such residence. Such arrangement or components shall not include equipment connected to solar energy system equipment that is a component of part or parts of a non-solar energy system or which uses any sort of recreational facility or equipment as a storage medium. Solar energy system equipment that generates electricity for use in a residence must conform to applicable requirements set forth in section sixty-six-j of the public service law. Provided, however, where solar energy system equipment is purchased and installed by a condominium management association or a cooperative housing corporation,

for purposes of this subsection only, the term "ten kilowatts" in such section sixty-six-j shall be read as "fifty kilowatts."

(4) Multiple taxpayers. Where solar energy system equipment is purchased and installed in a principal residence shared by two or more taxpayers, the amount of the credit allowable under this subsection for each such taxpayer shall be prorated according to the percentage of the total expenditure for such solar energy system equipment contributed by each taxpayer.

(5) Proportionate share. Where solar energy system equipment is purchased and installed by a condominium management association or a cooperative housing corporation, a taxpayer who is a member of the condominium management association or who is a tenant-stockholder in the cooperative housing corporation may for the purpose of this subsection claim a proportionate share of the total expense as the expenditure for the purposes of the credit attributable to his principal residence.

(6) Grants. For purposes of determining the amount of the expenditure incurred in purchasing and installing solar energy system equipment, the amount of any federal, state or local grant received by the taxpayer, which was used for the purchase and/or installation of such equipment and which was not included in the federal gross income of the taxpayer, shall not be included in the amount of such expenditures.

(7) When credit allowed. The credit provided for herein shall be allowed with respect to the taxable year, commencing after nineteen hundred ninety-seven, in which the solar energy system equipment is placed in service.

(8) Carryover of credit. If the amount of the credit, and carryovers of such credit, allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, such excess amount may be carried over to the five taxable years next following the taxable year with respect to which the credit is allowed and may be deducted from the taxpayer's tax for such year or years.

(g-2) Fuel cell electric generating equipment credit. (1) General. For taxable years beginning before January first, two thousand nine, an individual taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty percent of qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any

taxable year. The credit provided for herein shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

(2) Qualified fuel cell electric generating equipment expenditures.

(A) Qualified fuel cell electric generating equipment expenditures are the costs, incurred on or after July first, two thousand five, associated with the purchase of on-site electricity generation systems utilizing proton exchange membrane fuel cells, providing a rated baseload capacity of no less than one kilowatt and no more than one hundred kilowatts of electricity, which are located in this state at the time the qualified fuel cell electric generating equipment is placed in service.

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

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

(3) Multiple taxpayers. Where fuel cell electric generating equipment is purchased and installed in a principal residence shared by two or more taxpayers, the amount of the credit allowable under this subsection for each such taxpayer shall be prorated according to the percentage of the total expenditure for such fuel cell electric generating equipment contributed by each taxpayer.

(4) Grants. For purposes of determining the amount of the expenditure incurred in purchasing and installing fuel cell electric generating equipment, the amount of any federal, state or local grant received by the taxpayer, which was used for the purchase and/or installation of such equipment and which was not included in the federal gross income of the taxpayer, shall not be included in the amount of such expenditures.

(5) Carryover of credit. If the amount of the credit, and carryovers of such credit, allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, such excess amount may be carried over to the five taxable years next following the taxable year with respect to which the credit is allowed and may be deducted from the taxpayer's tax for such year or years.

(g-4) Geothermal energy systems credit. (1) General. An individual taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty-five percent of qualified geothermal energy system expenditures, except as provided in subparagraph (D) of paragraph two of this subsection, not to exceed five thousand dollars for qualified geothermal energy systems placed in service on or before June thirtieth, two thousand twenty-five, and ten thousand dollars for qualified geothermal energy equipment placed in service on or after July first, two thousand twenty-five.

(2) Qualified geothermal energy systems expenditures. (A) The term "qualified geothermal energy system expenditures" means expenditures for:

(i) the purchase of geothermal energy system equipment which is installed in connection with residential property which is (I) located in this state and (II) which is the taxpayer's residence at the time the geothermal energy system is placed in service; or

(ii) the lease of geothermal energy system equipment under a written agreement that spans at least ten years where such equipment owned by a person other than the taxpayer is installed in connection with residential property which is (I) located in this state and (II) which is the taxpayer's residence at the time the geothermal energy system equipment is placed in service.

(B) Such qualified expenditures shall include expenditures for materials, labor costs properly allocable to on-site preparation, assembly and original installation, architectural and engineering services, and designs and plans directly related to the construction or installation of the geothermal energy system equipment.

(C) Such qualified expenditures for the purchase of geothermal energy system equipment shall not include interest or other finance charges or costs that have been used to qualify for any other credit.

(D) Such qualified expenditures for the lease of geothermal energy system equipment under an agreement described in clause (ii) of subparagraph (A) of this paragraph shall include an amount equal to all payments made during the taxable year under such agreement. Provided, however, such credits shall only be allowed for fourteen years after the first taxable year in which such credit is allowed. Provided further, however, the twenty-five percent limitation in paragraph one of this

subsection shall only apply to the total aggregate amount of all payments to be made pursuant to an agreement referenced in clause (ii) of subparagraph (A) of this paragraph, and shall not apply to individual payments made during a taxable year under such agreement except to the extent such limitation on an aggregate basis has been reached.

(3) Geothermal energy system equipment. The term "geothermal energy system equipment" shall mean a system whose original use begins with the taxpayer; which meets the eligibility criteria, if any, prescribed by the department; and which is a ground coupled solar thermal system that utilizes the solar thermal energy stored in the ground or in bodies of water to produce heat, and which is commonly known as or referred to as a ground source heat pump system.

(4) Multiple taxpayers. Where geothermal energy system equipment is purchased and installed in a residence shared by two or more taxpayers, the amount of the credit allowable under this subsection for each such taxpayer shall be prorated according to the percentage of the total expenditure for such geothermal energy system equipment contributed by each taxpayer.

(5) Proportionate share. Where geothermal energy system equipment is purchased and installed by a condominium management association or a cooperative housing corporation, a taxpayer who is a member of the condominium management association or who is a tenant-stockholder in the cooperative housing corporation may for the purpose of this subsection claim a proportionate share of the total expense as the expenditure for the purposes of the credit attributable to the taxpayer's residence.

(6) Grants. For purposes of determining the amount of the expenditure incurred in purchasing and installing geothermal energy system equipment, the amount of any federal, state or local grant received by the taxpayer, which was used for the purchase and/or installation of such equipment and which was not included in the federal gross income of the taxpayer, shall not be included in the amount of such expenditures.

(7) Limitation. The credit shall only be allowed for geothermal energy system equipment installed in connection with residential property used exclusively for personal purposes by the taxpayer. No credit shall be allowed for geothermal energy system equipment installed in connection with residential property that is rented at any time during the taxable year for which the credit is being claimed.

(8) When credit allowed. The credit provided for herein shall be allowed with respect to the taxable year in which the geothermal energy system equipment is placed in service and shall be allowed only for geothermal energy system equipment placed into service after January first, two thousand twenty-two. However, the taxpayer shall be allowed a credit for only one such system in any taxable year.

(9) Application of credit. If the amount of the credit, and carryovers of such credit, allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, such excess amount may be carried over to the five taxable years next following the taxable year with respect to which the credit is allowed and may be deducted from the taxpayer's tax for such year or years. For taxable years beginning on or after January first, two thousand twenty-six, taxpayers who are (A) married filing jointly or qualifying surviving spouses with a federal adjusted gross income of one hundred eighty thousand dollars or less, or (B) single, married filing separate, or heads of household with a federal adjusted gross income of ninety thousand dollars or less, may elect to receive such excess amount as a refund. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(h) Research and development tax credit. (1) For taxable years commencing prior to January first, nineteen hundred eighty-seven, a taxpayer shall be allowed a credit against the tax imposed by this article after allowance of any other credit provided under this section and any credits permitted under sections six hundred twenty, six hundred twenty-one and six hundred thirty-five of this article. The amount of the credit shall be ten percent of the cost or other basis for federal income tax purposes of tangible personal property, including buildings and other structural components of buildings, described in paragraph two of this subsection acquired, constructed or reconstructed, or erected after June thirtieth, nineteen hundred eighty-two.

(2) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase

as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are used or are to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(3) A taxpayer shall not be allowed a credit under this subsection with respect to any property described in paragraphs one and two of this subsection, if such property qualifies for the modification allowed under either paragraph three or paragraph four of subsection (g) of section six hundred twelve whether or not such amount shall have been subtracted, or if a credit is taken pursuant to subsection (a) of this section. Provided, however, with respect to property which qualifies under either clause (A), (B) or (C) of paragraph four of subsection (g) because such property was ordered on or before December thirty-first, nineteen hundred sixty-eight, but with respect to which no expenditure has been paid or incurred at such date, the taxpayer may elect to subtract the amount allowable under clause (A), (B) or (C) or may take the credit provided by this subsection, but not both.

(4) A taxpayer shall not be allowed a credit under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be allowed a credit under this subsection with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded.

(5) If the amount of credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted

from the taxpayer's tax for such year or years but in no event shall such credit be carried over to taxable years commencing on or after January first, nineteen hundred ninety-four.

(6) (A) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code, and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subparagraph, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(B) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the internal revenue code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(C) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the internal revenue code other than three-year property as defined in subsection (e) of such section one hundred sixty-eight, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(D) With respect to any property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code.

(i) S corporation credits. (1) For purposes of determining the

application under this section of the credit provisions enumerated in the following table, a shareholder of a New York S corporation:

(A) shall be treated as the taxpayer with respect to his or her pro rata share of the corresponding credit base of such corporation, determined for the corporation's taxable year ending with or within the shareholder's taxable year and

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (f) of subdivision one of section two hundred ten-B of this chapter.

With respect to the following credit under this section:

(i) Investment tax credit under subsection (a)

The corporation's credit base under section two hundred ten-B of this chapter is:

Investment credit base or qualified rehabilitation expenditures under subdivision one of section two hundred ten-B

(ii) Empire zone investment tax credit under subsection (j)

Cost or other basis under subdivision three

of section two hundred ten-B

(v) Agricultural property tax credit under subsection (n)

Allowable school district property taxes under subdivision eleven of section two hundred ten-B

(vi) Credit for employment of persons with disabilities under subsection (o)

Qualified first-year wages or qualified second-year wages under subdivision twelve

of section two hundred ten-B

(vii) Employment incentive credit under subsection (a-1)

Applicable investment credit base under subdivision two

of section two hundred ten-B

(viii) Empire zone employment incentive credit under subsection (j-1)

Applicable investment credit under subdivision four

of section

two hundred ten-B

(ix) Alternative fuels and electric vehicle recharging property

Amount of credit under subdivision thirty of section two hundred ten-B

credit under subsection (p)	
(x) Qualified emerging technology company employment credit under subsection (q)	Applicable credit base under subdivision seven of section two hundred ten-B
(xi) Qualified emerging technology company capital tax credit under subsection (r)	Qualified investments under subdivision eight of section two hundred ten-B
(xii) Credit for purchase of an automated external defibrillator under subsection (s)	Cost of an automated external defibrillator under subdivision thirteen of section two hundred ten-B
(xiii) Low-income housing credit under subsection (x)	Credit amount under subdivision fifteen of section two hundred ten-B
(xv) QEZE credit for real property taxes under subsection (bb)	Amount of credit under subdivision five of section two hundred ten-B
(xvi) QEZE tax reduction credit under subsection (cc)	Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision six of section two hundred ten-B and amount of tax factor as determined under subdivision (f) of section sixteen
(xvii) Green building credit under subsection (y)	Amount of green building credit under subdivision sixteen of section two hundred ten-B
(xviii) Credit for long-term care insurance premiums under subsection (aa)	Qualified costs under subdivision fourteen of section two hundred ten-B
(xix) Brownfield redevelopment credit under subsection (dd)	Amount of credit under subdivision seventeen of section two hundred ten-B

(xx) Remediated brownfield credit for real property taxes for qualified sites under subsection (ee)	Amount of credit under subdivision eighteen of section two hundred ten-B
(xxi) Environmental remediation insurance credit under subsection (ff)	Amount of credit under subdivision nineteen of section two hundred ten-B
(xxii) Empire state film production credit under subsection (gg)	Amount of credit for qualified production costs in production of a qualified film under subdivision twenty of section two hundred ten-B
(xxiv) Security training tax credit under subsection (ii)	Amount of credit under subdivision twenty-one of section two hundred ten-B
(xxvi) Empire state commercial production credit under subsection (jj)	Amount of credit for qualified production costs in production of a qualified commercial under subdivision twenty-three of section two hundred ten-B
(xxvii) Biofuel production tax credit under subsection (jj)	Amount of credit under subdivision twenty-four of section two hundred ten-B
(xxviii) Clean heating fuel credit under subsection (mm)	Amount of credit under subdivision twenty-five of section two hundred ten-B
(xxix) Credit for rehabilitation of historic properties under subsection (oo)	Amount of credit under subdivision twenty-six of section two hundred ten-B
* (xxxi) Excelsior jobs program tax credit under subsection (qq)	Amount of credit under subdivision thirty-one of section two hundred ten-B
* NB There are 2 clause (xxxi)'s	
* (xxxi) Empire state film post production credit under subsection (qq)	Amount of credit for qualified post production costs of a qualified film under subdivision thirty-two

	of section two hundred ten-B
* NB There are 2 clause (xxxi)'s	
* (xxxii) Economic transformation and facility redevelopment credit	Amount of credit under subdivision thirty-five of section two hundred ten-B
* NB Repealed December 31, 2026	
* (xxxiii) New York youth jobs program tax credit	Amount of credit under subdivision thirty-six of section two hundred ten-B
* NB There are 3 clause (xxxiii)'s	
* (xxxiii) Empire state jobs retention program credit	Amount of credit under subdivision thirty-seven of section two hundred ten-B
* NB There are 3 clause (xxxiii)'s	
* (xxxiii) Credit for companies who provide transportation to individuals with disabilities under subsection (tt)	Amount of credit under subdivision thirty-eight of section two hundred ten-B
* NB Repealed December 31, 2028	
* NB There are 3 clause (xxxiii)'s	
(xxxiv) Alcoholic beverage production credit under subsection (uu)	Amount of credit under subdivision thirty-nine of section two hundred ten-B
* (xxxv) Hire a vet credit under subsection (a-2)	Amount of credit under subdivision twenty-nine of section two hundred ten-B
* NB There are 2 clause (xxxv)'s	
* (xxxv) Minimum wage reimbursement credit under subsection (aaa)	Amount of credit under subdivision forty of section two hundred ten-B
* NB There are 2 clause (xxxv)'s	
(xxxvi) Tax-free NY area tax elimination credit	Amount of credit under subdivision forty-one of section two hundred ten-B
(xxxvii) Real property tax credit for manufacturers under subsection (xx)	Amount of credit under subdivision forty-three of section

(xxxviii) Tax-free NY area excise tax on telecommunications services credit under subsection (yy)	two hundred ten-B Amount of credit under subdivision forty-four of section two hundred ten-B
** (xxxix) Musical and theatrical production credit under subsection (u)	Amount of credit for the sum of the qualified production expenditures and the transportation expenditures in a qualified musical and theatrical production under subdivision forty-seven of section two hundred ten-B
** NB Repealed January 1, 2030	
(xl) Workers with disabilities tax credit under subsection (zz)	Amount of credit under subdivision forty-eight of section two hundred ten-B
(xli) Farm workforce retention credit under subsection (fff)	Amount of credit under subdivision fifty-one of section two hundred ten-B
(xlii) Employee training incentive program credit under subsection (ddd)	Amount of credit under subdivision fifty of section two hundred ten-B
* (xliii) Life sciences research and development tax credit under subsection (hhh)	Amount of credit under subdivision fifty-two of section two hundred ten-B
* NB There are 3 clause (xliii)'s	
* (xliii) Empire state apprentice- ship tax credit under subsection (vvv)	Amount of credit under subdivision forty-nine of section two hundred ten-B
* NB There are 3 clause (xliii)'s	
* (xliii) Farm donations to food pantries credit under subsection (n-2)	Amount of credit under subdivision fifty-two of section two hundred ten-B
* NB There are 3 clause (xliii)'s	
* (xliv) Employer-provided child	Amount of credit under subdivision

care credit (jjj)	fifty-three of section two hundred ten-B
* NB There are 2 clause (xliv)'s	
* (xliv) Recovery tax credit under subsection (jjj)	Amount of credit under subdivision fifty-three of section two hundred ten-B
* NB There are 2 clause (xliv)'s	
* (xlv) Television writers' and directors' fees and salaries credit under subsection (v)	Amount of credit for the sum of qualified television writers' and directors' salaries credit under subdivision fifty-four of section two hundred ten-B
* NB Effective on the first of January next succeeding the date the department of economic development provides notice to the legislative bill drafting commission of a determination pursuant to § 6 sb 2 (b) of chapter 683 of 2019	
(xlvi) Empire state digital gaming media production credit under subsection (nnn)	Amount of credit under subdivision fifty-five of section two hundred ten-B
(xlvii) Restaurant return-to-work tax credit	Amount of credit under subdivision fifty-six of section two hundred ten-B
* (xlviii) New York city musical and theatrical production tax credit	Amount of credit under subdivision fifty-seven of section two hundred ten-B
* NB Repealed January 1, 2028	
* (xlix) Farm employer overtime credit under subsection (nnn)	Amount of credit under subdivision fifty-eight of section two hundred ten-B
* NB There are 4 clause (xlix)'s	
* (xlix) COVID-19 capital costs tax credit under subsection (nnn)	Amount of credit under subdivision 58 of section two hundred ten-B
* NB There are 4 clause (xlix)'s	
* (xlix) Grade no. 6 heating oil conversion tax credit under	Amount of credit under subdivision fifty-eight of section two hundred

subsection (nnn)	ten-B
* NB There are 4 clause (xlix)'s	
* (xlix) Additional restaurant return-to-work credit	Amount of credit under subdivision fifty-six-a of section two hundred ten-B
* NB There are 4 clause (xlix)'s	
(l) Child care creation and expansion tax credit under subsection (ooo)	Amount of credit under subdivision fifty-nine of section two hundred ten-B
* (li) Newspaper and broadcast media jobs tax credit under subsection (ppp)	Amount of credit under subdivision sixty of section two hundred ten-B
* NB There are 2 clause (li)'s	
* (li) Commercial security tax credit under subsection (ppp)	Amount of credit under subdivision sixty of section two hundred ten-B
* NB There are 2 clause (li)'s	
(lii) Empire state film production credit under subsection (gg-1)	Amount of credit for qualified production costs in production of a qualified film under subdivision twenty-a of section two hundred ten-B

(2) The reduction of a shareholder's proportionate interest in the corporation shall be treated as a disposition of property for which a redetermination of credit is required under subsections (a), (j) and (l) of this section.

(3) Transition provisions relating to S corporation credits allowed for taxable years beginning before nineteen hundred ninety-four. (A) Credit carryover. Any excess credit under subparagraph (A) of paragraph one of this subsection, as it was in effect for taxable years beginning before nineteen hundred ninety-four, may be carried over to the shareholder's following year or years and may be deducted from such shareholder's tax for such year or years, except that any excess credit attributable to subdivision one of section two hundred ten-B of this chapter shall in no event be carried over beyond the ten taxable years next following the taxable year of origin.

(B) Credit recapture. Any redetermination of credit required by this subsection as it was in effect for taxable years beginning before nineteen hundred ninety-four, upon disposition or cessation of qualified use of property pursuant to paragraph (e) of subdivision one, or paragraph (f) of subdivision three of section two hundred ten-B of this chapter shall be attributed in pro rata shares to the shareholders who were allowed credit under this subsection with respect to such property, and the reduction of a shareholder's proportionate stock interest shall be treated as a disposition of property for which a redetermination of credit under such paragraphs is required with respect to such shareholder.

(4) Transition provisions relating to credit for special additional mortgage recording tax. In the case of the special additional mortgage recording tax credit, in addition to any carryover thereof under paragraph three of this subsection (relating to carryover from taxable years of the shareholder beginning before nineteen hundred ninety-four), there also shall be allowed a credit for such tax which is due and paid by an S corporation in a taxable year of the corporation beginning in nineteen hundred ninety-three, which year ends within the shareholder's taxable year beginning in nineteen hundred ninety-four. Any such credit, and carryover thereof, shall be allowed as provided under this subsection as it was in effect for taxable years beginning before nineteen hundred ninety-four.

(j) Empire zone investment tax credit (EZ-ITC). (1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article where the taxpayer has been certified pursuant to article eighteen-B of the general municipal law. The amount of such credit shall be eight percent of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph two of this subsection, which is located within an empire zone designated as such pursuant to article eighteen-B of such law, but only if the acquisition, construction, reconstruction or erection of such property occurred or was commenced on or after the date of such designation and prior to the expiration thereof. Provided, however, that in the case of an acquisition, construction, reconstruction or erection which was commenced during such

period and continued or completed subsequently, the credit shall be eight percent of the portion of the cost or other basis for federal income tax purposes attributable to such period, which portion shall be ascertained by multiplying such cost or basis by a fraction the numerator of which shall be the expenditures paid or incurred during such period for such purposes and the denominator of which shall be the total of all expenditures paid or incurred for such acquisition, construction, reconstruction or erection.

(2) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings which: (A) are depreciable pursuant to section one hundred sixty-seven of the internal revenue code, (B) have a useful life of four years or more, (C) are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, (D) have a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, and (E) are (i) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (ii) industrial waste treatment facilities or air pollution control facilities used in the taxpayer's trade or business, (iii) research and development property, (iv) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, or (v) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of

the Internal Revenue Code. For purposes of clauses (iv) and (v) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer or registered investment adviser is allowed a credit under this subsection if the property is used by its affiliated regulated broker, dealer or registered investment adviser in accordance with this subsection. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (iv) and (v) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (iv) and (v) of this subparagraph unless (I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or (II) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (III) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of clause (III) of this subparagraph, the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either

each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of this subsection, the term "goods" shall not include electricity. For purposes of this paragraph, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combination to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced. For purposes of this paragraph, the terms "research and development property", "industrial waste treatment facilities", and "air pollution control facilities" shall have the meanings ascribed thereto by clauses (ii), (iii) and (iv), respectively, of subparagraph (B) of paragraph two of subsection (a) of this section, and the provisions of subparagraph (C) of such paragraph two shall apply.

(3) A taxpayer shall not be allowed a credit under this subsection with respect to any tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation except where a taxpayer leases property to an affiliated regulated broker, dealer, or registered investment adviser that uses such property in accordance with clause (iv) or (v) of subparagraph (E) of paragraph two of this subsection. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be allowed a credit under this subsection with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen

hundred eighty-four, shall be disregarded.

(4) If the amount of credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of carrying over any such excess, a taxpayer who qualifies as an owner of a new business for purposes of paragraph ten of subsection (a) of this section may, at his option, receive fifty percent of such excess as a refund. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

(5) At the option of the taxpayer, air or water pollution control facilities which qualify for elective modifications under subsection (h) of section six hundred twelve, or research and development facilities which qualify for elective modification under paragraphs three and four of subsection (g) of section six hundred twelve, or property which qualifies for the credit provided under subsection (a) or (h) of this section may be treated as property principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, mining, refining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, provided the property otherwise qualifies under paragraph two of this subsection, in which event a deduction shall not be allowed under such subsection (h) or such paragraphs three and four of subsection (g) and a credit shall not be allowed under such subsection (a) or (h).

(6) (A) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified

use bear to the months of useful life. If the property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subsection. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subsection, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(B) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the internal revenue code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(C) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the internal revenue code other than three-year property as defined in subsection (e) of such section one hundred sixty-eight of the internal revenue code which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of

or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(D) With respect to any property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code.

(E) For purposes of this paragraph, disposal or cessation of qualified use shall not be deemed to have occurred solely by reason of the termination or expiration of an empire zone's designation as such.

(F)(i) For purposes of this paragraph, the decertification of a business enterprise with respect to an empire zone shall constitute a disposal or cessation of qualified use of the property on which the credit was taken which is located in the zone to which the decertification applies, on the effective date of such decertification.

(ii) Where a business enterprise has been decertified based on a finding pursuant to clause one, two, or five of subdivision (a) of section nine hundred fifty-nine of the general municipal law, the amount

required to be added back by reason of this paragraph shall be augmented by an amount equal to the product of the amount of credit, with respect to property which is disposed of or ceases to be in qualified use, which was deducted from the taxpayer's tax otherwise due under this article for all prior taxable years (subject to the limit set forth in this subparagraph) and the underpayment rate of interest (without regard to compounding) set by the commissioner of taxation and finance pursuant to subdivision (j) of section six hundred ninety-seven of this chapter, in effect on the last day of the taxable year. The limit shall be (I) the amount of credit, with respect to the property which is disposed of or ceases to be in qualified use, which was deducted from the taxpayer's tax otherwise due under this article for all prior taxable years, reduced (but not below zero) by (II) the credit allowed for actual use. For purposes of this subparagraph, the attribution to specific property of credit amount deducted from tax shall be established in accordance with the date of placement in service of such property in the empire zone.

(iii) In no event shall the amount of the credit allowed pursuant to this subsection be rendered, solely by reason of clause (i) of this subparagraph, less than the amount of the credit to which the taxpayer would otherwise be entitled under subsection (a) of this section.

(iv) Notwithstanding any other provision of this subsection, in the case of a business enterprise which has been decertified, any amount of credit allowed with respect to the property of such business enterprise located in the zone to which the decertification applies which is carried over pursuant to paragraph four of this subsection shall not be carried over beyond the seventh taxable year next following the taxable year with respect to which the credit provided for in this subsection was allowed.

(G) For purposes of this paragraph, where a credit is allowed with respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, such revocation shall constitute a disposal or cessation of qualified use, except with respect to property contained in or comprising such facility which is described in clause (i), (ii) or (iii) of subparagraph (E) of

paragraph two of this subsection other than as part of or comprising an air pollution control facility. Also for purposes of this paragraph, the use of an air pollution control facility or an industrial waste treatment facility for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable shall constitute a cessation of qualified use, except with respect to property contained in or comprising such facility which is described in clause (i) or (iii) of subparagraph (E) of paragraph two of this subsection.

(H) Except as provided in this subparagraph, this paragraph shall not apply to a credit allowed by this subsection to a taxpayer that is a partner in a partnership in the case of manufacturing property; provided, at the time such property was placed in service by such partnership in an empire zone the basis for federal income tax purposes of such property (or a project that includes such property) equaled or exceeded three hundred million dollars and such partner owned his or her partnership interest for at least three years from the date such property was placed in service. If such property ceases to be in qualified use after it is placed in service, this paragraph shall apply to such partner in the year such property ceases to be in qualifying use.

(7) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law, a taxpayer that is certified as an empire zone business pursuant to such article eighteen-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed certified under such article eighteen-B for purposes of this subdivision until April first, two thousand fourteen. In addition, the areas designated as empire zones in which the taxpayer is certified as an empire zone business on the day immediately preceding the day the empire zones program expired shall continue to be deemed empire zones for purposes of this subdivision until April first, two thousand fourteen.

(j-1) Empire zone employment incentive credit. (1) Where a taxpayer is allowed a credit under subsection (j) of this section, the taxpayer shall be allowed a credit for each of the three years next succeeding the taxable year for which the credit under such subsection (j) is allowed, with respect to such property, whether or not deductible in such taxable year or in subsequent taxable years pursuant to paragraph

four of subsection (j) of this section, of thirty percent of the credit allowable under such subsection (j); provided, however, that the credit allowable under this subsection for any taxable year shall only be allowed if the average number of employees employed by the taxpayer in the empire zone, designated pursuant to article eighteen-B of the general municipal law, in which such property is located during such taxable year is at least one hundred one percent of the average number of employees employed by the taxpayer in such empire zone or, where applicable, in the geographic area subsequently constituting such zone, during the taxable year immediately preceding the taxable year for which the credit under such subsection (j) is allowed and provided, further, that in the case of a new business, the credit allowable under this subsection for any taxable year shall be allowed if the average number of employees employed in such empire zone in such taxable year is at least one hundred one percent of the average number of such employees during the taxable year in which the credit under such subsection (j) is allowed.

(2) The average number of employees employed in an empire zone, or, where applicable, in the geographic area subsequently constituting such zone, in a taxable year shall be computed by ascertaining the number of such employees within such zone, or, where applicable, in the geographic area subsequently constituting such zone, employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in the taxable year, by adding together the number of employees ascertained in each of such dates and dividing the sum so obtained by the number of such abovementioned dates occurring within the taxable year.

(3) If the amount of credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of carrying over any such excess, a taxpayer who qualified as an owner of a new business for purposes of paragraph ten of subsection (a) of this section may, at his option, receive fifty percent of such excess as a refund. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

(4) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law, a taxpayer that is certified as an empire zone business pursuant to such article eighteen-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed in the empire zone in which the taxpayer was certified as an empire zone business on the day immediately preceding the day the empire zones program expired for each of the three years next succeeding the taxable year for which the credit under subdivision (j) is allowed.

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

(2) For the purposes of this subsection, the following terms shall have the following meanings: (A) "Empire zone wages" means wages paid by the taxpayer for full-time employment during the taxable year, in an area designated or previously designated as an empire zone or zone equivalent area pursuant to article eighteen-B of the general municipal law, where such employment is in a job created in the area (i) during the period of its designation as an empire zone, (ii) within four years of the expiration of such designation, or (iii) during the ten year period immediately following the date of designation as a zone equivalent area, provided, however, that if the taxpayer's certification under article eighteen-B of the general municipal law is revoked with respect to an empire zone or zone equivalent area, any wages paid by the taxpayer, on or after the effective date of such decertification, for employment in such zone shall not constitute empire zone wages.

(B) "Targeted employee" means a New York resident who receives empire zone wages and who is (i) an eligible individual under the provisions of the targeted jobs tax credit (section fifty-one of the internal revenue code), (ii) eligible for benefits under the provisions of the workforce

investment act as a dislocated worker or low-income individual (P.L. 105-220, as amended), (iii) a recipient of public assistance benefits, (iv) an individual whose income is below the most recently established poverty rate promulgated by the United States department of commerce, or a member of a family whose family income is below the most recently established poverty rate promulgated by the appropriate federal agency or (v) an honorably discharged member of any branch of the armed forces of the United States.

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

(C) "Average number of individuals employed full-time" shall be computed by ascertaining the number of such individuals employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year or other applicable period, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year or other applicable period.

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

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

(4) The amount of the credit shall equal the sum of

(i) the product of three thousand dollars and the average number of individuals employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subsection, who

(I) received empire zone wages for more than half of the taxable year,

(II) received with respect to more than half of the period of employment by the taxpayer during the taxable year, an hourly wage which was at least one hundred thirty-five percent of the minimum wage specified in section six hundred fifty-two of the labor law, and

(III) are targeted employees; and

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

Provided, further, however, that the credit provided for herein with respect to the taxable year, and carryovers of such credit to the taxable year, deducted from the tax otherwise due, may not, in the aggregate, exceed fifty percent of the tax imposed under section six hundred one computed without regard to any credit provided for under this article.

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

(iv) If a taxpayer is certified in an empire zone designated under subdivision (a) or (d) of section nine hundred fifty-eight of the general municipal law, the dollar amounts specified under subparagraph (i) or (ii) of this paragraph shall be increased by five hundred dollars for each qualifying individual under such subparagraph who received, during the taxable year, wages in excess of forty thousand dollars.

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

(5) If the amount of the credit and carryovers of such credit allowed

under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess, as well as any part of the credit or carryovers of such credit, or both, which may not be deducted from the tax otherwise due by reason of the final sentence in paragraph four hereof, may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of carrying over any such excess, a taxpayer who qualifies as an owner of a new business for purposes of paragraph ten of subsection (a) of this section may, at his option, receive fifty percent of such excess as a refund. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

(l) Empire zone capital tax credit. (1) A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to twenty-five percent of the sum of the following investments and contributions made during the taxable year and certified by the commissioner of economic development: (A) for taxable years beginning before January first, two thousand five, qualified investments made in, or contributions in the form of donations made to, one or more empire zone capital corporations established pursuant to section nine hundred sixty-four of the general municipal law prior to January first, two thousand five, (B) qualified investments in certified zone businesses which during the twelve month period immediately preceding the month in which such investment is made employed full-time within the state an average number of individuals of two hundred fifty or fewer, computed pursuant to the provisions of subparagraph (C) of paragraph two of subsection (k) of this section, except for investments made by or on behalf of an owner of the business including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and (C)

contributions of money to community development projects as defined in regulations promulgated by the commissioner of economic development. "Qualified investments" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity not in corporate or partnership form in exchange for an ownership interest in such entity. The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed three hundred thousand dollars, and shall not exceed one hundred thousand dollars with respect to the investments and contributions described in each of subparagraphs (A), (B) and (C) of this paragraph.

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

(2) (A) If the amount of the credit and carryovers of such credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence of this subparagraph, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years. In addition, the amount of such credit, and carryovers of such credit to the taxable year, deducted from the tax otherwise due may not, in the aggregate, exceed fifty percent of the tax imposed under section six hundred one computed without regard to any credit provided for by this section.

(B) In the case of a husband or wife who is required to file a separate return, the limitation provided for in paragraph one of this subsection shall be fifty thousand dollars in lieu of one hundred thousand dollars and one hundred fifty thousand dollars in lieu of three hundred thousand dollars, unless the spouse of the taxpayer has no credit allowable under this subsection for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(C) In the case of an estate or trust, the limitation provided for in paragraph one of this subsection shall be reduced to an amount which bears the same ratio to one hundred thousand dollars and an amount which bears the same ratio to three hundred thousand dollars as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(3) Where the stock, partnership interest or other ownership interest arising from a qualified investment as described in subparagraphs (A) and (B) of paragraph one of this subsection is disposed of, the taxpayer's New York taxable income shall be computed, pursuant to regulations promulgated by the commissioner, so as to properly reflect the reduced cost thereof arising from the application of the credit provided for herein.

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

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

(C) The required portion of the credit originally allowed shall be the product of (i) the portion of such credit attributable to the property disposed of or the payment or contribution recovered and (ii) the applicable percentage.

(D) The applicable percentage shall be:

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

(ii) sixty-seven percent, if the disposition or recovery occurs more than twelve but not more than twenty-four months after the end of the

taxable year with respect to which the credit is allowed, or

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

(5) If the designation of an area as an empire zone is no longer in effect because the designations of all empire zones pursuant to article eighteen-B of the general municipal law have expired, a taxpayer that has made a contribution of money on or before the day immediately preceding the day the empire zones expired to a community development project approved by the commissioner of economic development shall be deemed eligible to claim the empire zone capital credit under subparagraph (C) of paragraph one of this subsection for additional contributions made prior to April first, two thousand fourteen and certified by the commissioner of economic development to that community development project as payment of a commitment made by the taxpayer to that community development project before the empire zones expired.

(m) Excess deductions credit. (1) General. For taxable years beginning in nineteen hundred ninety-five, an excess deductions credit shall be allowed against the tax determined under subsections (a) through (d) of section six hundred one of this article. The credit shall be allowed to an individual taxpayer whose New York itemized deduction determined under section six hundred fifteen (whether or not the taxpayer elects the New York itemized deduction for the taxable year) exceeds the base amount determined under paragraph two hereof. The credit shall not exceed the tax determined under subsections (a) through (d) of section six hundred one for the taxable year, reduced by the credits permitted under subsection (c) of this section and sections six hundred twenty and six hundred twenty-one of this article.

(2) Base amount. The base amount shall be determined by the taxpayer's standard deduction status under section six hundred fourteen (whether or not the taxpayer employs the standard deduction for the taxable year) as follows:

If the taxpayer's standard
deduction status is:

The base amount is:

Unmarried individual who is

not a head of household nor a
surviving spouse nor an

individual whose federal

exemption amount is zero \$6,000

Husband and wife whose New York

taxable income is determined

jointly, or a surviving spouse \$9,500

Head of household \$7,000

Married individual filing a

separate New York return \$4,750

(3) Credit amount.

(A) Married individuals filing joint returns and surviving spouses.
The amount of the credit allowed pursuant to this subsection for married
individuals filing jointly under subsection (b) of section six hundred
fifty-one and for a surviving spouse shall be:

If New York taxable income is:

The credit is the following
percentage of New York
taxable income:

Not over \$11,500 0.57%

Over \$11,500 but not over \$17,500 0.51%

Over \$17,500 but not over \$24,100 0.36%

Over \$24,100 but not over \$31,500 0.26%

Over \$31,500 but not over \$35,500 0.16%

Over \$35,500 but not over \$42,000	0.11%
Over \$42,000 but not over \$49,000	0.06%
Over \$49,000	0.00%

(B) Heads of households. The amount of the credit allowed pursuant to this subsection for a head of household shall be:

If New York taxable income is:	The credit is the following percentage of New York taxable income:
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Not over \$7,600	0.57%
Over \$7,600 but not over \$11,700	0.51%
Over \$11,700 but not over \$16,400	0.36%
Over \$16,400 but not over \$20,500	0.26%
Over \$20,500 but not over \$23,800	0.16%
Over \$23,800 but not over \$28,650	0.11%
Over \$28,650 but not over \$33,400	0.06%
Over \$33,400	0.00%

(C) Unmarried individuals and married individuals filing separate returns. The amount of the credit allowed pursuant to this subsection for an individual who is not a married individual filing jointly under subsection (b) of section six hundred fifty-one nor a head of a household nor a surviving spouse shall be:

If New York taxable income is:	The credit is the following percentage of New York taxable income:
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Not over \$5,600	0.57%
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Over \$5,600 but not over \$8,600	0.51%
Over \$8,600 but not over \$12,000	0.36%
Over \$12,000 but not over \$15,700	0.26%
Over \$15,700 but not over \$17,600	0.16%
Over \$17,600 but not over \$21,000	0.11%
Over \$21,000 but not over \$24,500	0.06%
Over \$24,500	0.00%

(n) Agricultural property tax credit. (1) General. In the case of a taxpayer who is an eligible farmer or an eligible farmer who has paid taxes pursuant to a land contract, there shall be allowed a credit for the allowable school district property taxes. The term "allowable school district property taxes" means the school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph five of this subsection and the income limitation provided in paragraph six of this subsection. Such credit shall be allowed against the taxes imposed by this article for the taxable year reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess.

(1-a) New York gross income from farming. For purposes of this subsection, the term "New York gross income from farming" means a taxpayer's federal gross income from farming, plus payments from the state's farmland protection program, administered by the department of agriculture and markets, income from a commercial horse boarding operation as defined by subdivision thirteen of section three hundred one of the agriculture and markets law, and income from the production or sale of maple syrup, Christmas trees, and cider or wine from a licensed New York state farm cidery or winery, as provided for in section fifty-eight-c and article six of the alcoholic beverage control

law.

(2) Eligible farmer. For purposes of this subsection, the term "eligible farmer" means a taxpayer whose New York gross income from farming for the taxable year, or whose average New York gross income from farming for the current year and two prior taxable years, is at least two-thirds of such taxpayer's federal gross income from all sources less thirty thousand dollars. The term "eligible farmer" also includes an individual other than the taxpayer of record for qualified agricultural land who has paid the school district property taxes on such land pursuant to a contract for the future purchase of such land; provided that such individual meets the definition of "eligible farmer" pursuant to this paragraph.

(3) School district property taxes. For purposes of this subsection, the term "school district property taxes" means all property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied for school district purposes on the qualified agricultural property (A) owned by the taxpayer, (B) owned by the father, mother, grandfather, grandmother, brother or sister of the taxpayer and a written agreement expressing intent to eventually purchase the land has been entered into, or (C) owned by trust where the taxpayer is an immediate family member of the settlor, and where under the terms of the trust the title to the property shall pass to such taxpayer upon the death of the settlor.

(4) Qualified agricultural property. For purposes of this subsection, the term "qualified agricultural property" means land located in this state which is used in agricultural production, and land improvements, structures and buildings (excluding buildings used for the taxpayer's residential purpose) located on such land which are used or occupied to carry out such production. Qualified agricultural property also includes land set aside or retired under a federal supply management or soil conservation program or land that at the time it becomes subject to a conservation easement, as defined under subsection (kk) of this section, met the requirements under this paragraph.

(5) Acreage limitation. (A) Eligible taxes. In the event that the qualified agricultural property owned by the taxpayer includes land in excess of the base acreage as provided in this paragraph, the amount of school district property taxes eligible for credit under this subsection

shall be that portion of the school district property taxes which bears the same ratio to the total school district property taxes paid during the taxable year, as the acreage allowable under this paragraph bears to the entire acreage of such land.

(B) Allowable acreage. The allowable acreage is the sum of the base acreage set forth below and fifty percent of the incremental acreage. The incremental acreage is the excess of the entire acreage of qualified agricultural land owned by the taxpayer over the base acreage. Except as provided in subparagraph (C) of this paragraph:

For taxable years beginning:	The base acreage is:
in 1997	100
after 1997 but before 2006	250
2006 and thereafter	350

For taxable years beginning after two thousand, total base acreage may be increased by any acreage enrolled or participating during the taxable year in a federal environmental conservation acreage reserve program pursuant to title three of the federal agriculture improvement and reform act of nineteen hundred ninety-six.

(C) Base acreage of related persons. Where the taxpayer and one or more related persons each own qualified agricultural property on the first day of March of any year, the base acreage under subparagraph (B) of this paragraph shall be divided equally and allotted among the taxpayer and such related persons, and the taxpayer's base acreage for the taxable year which includes such March first shall be limited to its allotted share. Provided, however, if the taxpayer and all such related persons consent (at such time and in such manner as the commissioner may prescribe) to an unequal division, the taxpayer's base acreage for such taxable year shall be limited to its allotted share under such unequal division.

(D) Related persons. (i) For purposes of subparagraph (C) of this paragraph, the term "related person" means:

(I) a spouse;

(II) a corporation subject to tax under article nine-A of this chapter, where more than fifty percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the taxpayer, or, where the taxpayer is a trust, where such stock is owned

directly or indirectly by or for the grantor of such trust;

(III) a partnership, estate or trust of which the taxpayer owns, directly or indirectly, more than fifty percent of the capital, profits or beneficial interest.

(ii) For purposes of subparagraph (C) of this paragraph, where the taxpayer is an estate or trust, the term "related person" shall also mean a corporation subject to tax under article nine-A of this chapter, a partnership, an estate or trust:

(I) where more than fifty percent of the beneficial interest in the taxpayer is owned, directly or indirectly, by or for such corporation, partnership, estate or trust or by or for the grantor of such trust; or

(II) if the same person owns more than fifty percent of the beneficial interest in the taxpayer and more than fifty percent in value of the outstanding stock of the corporation, or more than fifty percent of the capital or profits interest in the partnership, or more than fifty percent of the beneficial interest in the estate or trust.

(iii) In determining whether a person is a related person within the meaning of this subparagraph:

(I) stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries;

(II) an individual shall be considered as owning the stock owned, directly or indirectly, by or for his spouse;

(III) stock constructively owned by a person by reason of the application of item (I) of this clause shall, for the purpose of applying item (I) or (II) of this clause, be treated as actually owned by such person.

(6) Income limitation. (A) In the event that the modified New York adjusted gross income of the taxpayer exceeds one hundred thousand dollars for taxable years beginning before two thousand six or two hundred thousand dollars for taxable year two thousand six and thereafter, the allowable school district property taxes under paragraph one of this subsection shall be the eligible taxes under subparagraph (A) of paragraph five of this subsection reduced by the product of the amount of such eligible taxes and a percentage, such percentage to be determined by multiplying one hundred percent by a fraction, the numerator of which is the lesser of fifty thousand dollars for taxable

years beginning before two thousand six or one hundred thousand dollars for taxable year two thousand six and thereafter or the excess of the taxpayer's modified New York adjusted gross income over one hundred thousand dollars for taxable years beginning before two thousand six or two hundred thousand dollars for taxable year two thousand six and thereafter and the denominator of which is fifty thousand dollars for taxable years beginning before two thousand six or one hundred thousand dollars for taxable year two thousand six and thereafter. For purposes of the preceding sentence, the term "eligible taxes", where the acreage limitation of paragraph five of this subsection does not apply, shall mean the total school district property taxes paid during the taxable year.

(B) The term "modified New York adjusted gross income" means the New York adjusted gross income for the taxable year reduced by the amount of principal paid on farm indebtedness during the taxable year. The term "farm indebtedness" means debt incurred or refinanced which is secured by farm property, where the proceeds of the debt are disbursed for expenditures incurred in the business of farming.

(7) Nonqualified use. (A) No credit in conversion year. In the event that qualified agricultural property is converted by the taxpayer to nonqualified use, credit under this subsection shall not be allowed with respect to such property for the taxable year of conversion (the conversion year).

(B) Credit recapture. If the conversion by the taxpayer of qualified agricultural property to nonqualified use occurs during the period of the two taxable years following the taxable year for which the credit under this subsection was first claimed with respect to such property, the credit allowed with respect to such property for the taxable years prior to the conversion year must be added back in the conversion year. Where the property converted includes land, and where the conversion is of only a portion of such land, the credit allowed with respect to the property converted shall be determined by multiplying the entire credit under this subsection for the taxable years prior to the conversion year by a fraction, the numerator of which is the acreage converted and the denominator of which is the entire acreage of such land owned by the taxpayer immediately prior to the conversion.

(C) Exception to recapture. Subparagraph (B) of this paragraph shall

not apply to the conversion of property where the conversion is by reason of involuntary conversion, within the meaning of section one thousand thirty-three of the internal revenue code.

(D) Conversion to nonqualified use. For purposes of this paragraph, a sale or other disposition of qualified agricultural property alone shall not constitute a conversion to a nonqualified use.

(9) Election to deem gross income of New York C corporation to shareholders. (A) General. For purposes of the credit under this subsection, the shareholders of an eligible corporation may elect to take into account their pro rata shares of the corporation's income and principal payments on farm indebtedness as provided in subparagraph (B) of this paragraph, for the taxable year of the corporation ending with or within the taxable year of each shareholder. No election under this paragraph shall be effective unless shareholders holding more than one-half, by vote and value, of the shares of stock of the corporation on the day on which the election is made have so elected.

(B) Inclusion in gross and adjusted gross income. (i) For any taxable year of the corporation for which the election under this paragraph is in effect, the shareholders of the corporation shall include:

(I) in gross income, for purposes of paragraph two of this subsection, their pro rata shares of the corporation's gross income, which income shall have the same character as in the hands of the corporation, and

(II) in adjusted gross income, for purposes of paragraph six of this subsection, their pro rata shares of the corporation's entire net income, and

(III) in principal payments on farm indebtedness, for purposes of paragraph six of this subsection, their pro rata shares of such payments made by the corporation.

(ii) Tiered New York C and New York S corporation. In the event that a shareholder of the corporation is a New York S corporation, the New York S corporation shall make the inclusions prescribed by clause (i) of this subparagraph (except that the inclusion prescribed by subclause (II) of such clause shall be in the entire net income of the New York S corporation), and the New York S corporation shall pass through such inclusions in pro rata shares to its shareholders for purposes of their calculation of credit under this subsection.

(C) Eligible corporation. The term "eligible corporation" means a

corporation subject to tax under article nine-A of this chapter which is a New York C corporation for federal income tax purposes.

(D) Pro rata share. For purposes of this paragraph, the pro rata share of any item of income or farm indebtedness principal payments for a taxable year of the corporation shall be determined with respect to a shareholder by assigning an equal portion of the item to each day of such taxable year, and then by dividing that portion pro rata among the shares outstanding on such day.

(E) Election. (i) An election under subparagraph (A) of this paragraph shall be made on such form and in such manner as the commissioner may prescribe.

(ii) When made. Such election shall be made no later than the due date of the corporation tax return (determined without regard to extensions) for the corporation's taxable year for which the election is to be effective.

(iii) When effective. Such election shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, until such election is terminated under subparagraph (F) of this paragraph.

(F) Termination. (i) Revocation. An election under subparagraph (A) of this paragraph shall be terminated if shareholders holding more than one-half, by vote and value, of the shares of stock of the corporation on the day on which the revocation is made revoke the election. Such revocation shall be made on such form and in such manner as the commissioner may prescribe, and shall be effective on the first day of the corporation's taxable year following the date on which the revocation is made.

(ii) Ineligible corporation. An election under subparagraph (A) of this paragraph shall be terminated on the first day of the corporation's taxable year with respect to which the corporation ceases to be an eligible corporation.

(G) Election after termination. If an election is terminated under subparagraph (F) of this paragraph, no further election under subparagraph (A) of this paragraph shall be made before the fifth taxable year of the corporation following the taxable year during which the termination occurred, unless the commissioner consents to such election.

(H) Waiver of secrecy. The commissioner shall have authority to reveal to shareholders of the corporation any information with respect to income or farm indebtedness principal payments of the corporation, for any taxable year of the corporation for which the election under this paragraph is in effect, which is the basis for denial in whole or in part of the credit claimed by such shareholders.

(n-1) Homeowner tax rebate credit. (1) An individual taxpayer who meets the eligibility standards in paragraph two of this subsection shall be allowed a credit against the taxes imposed by this article in the amount specified in paragraph three of this subsection for tax year two thousand twenty-two.

(2) To be eligible for the credit, the taxpayer (or taxpayers filing joint returns) (a) must own and primarily reside in real property receiving either the STAR exemption authorized by section four hundred twenty-five of the real property tax law or the school tax relief credit authorized by subsection (eee) of this section, and (b) must have had qualified gross income no greater than two hundred fifty thousand dollars in tax year two thousand twenty.

(3) Amount of credit. (a) For a taxpayer who owned and primarily resided in real property receiving the basic STAR exemption or who received the basic STAR credit, the amount of the credit shall equal the STAR tax savings associated with such basic STAR exemption in the two thousand twenty-one--two thousand twenty-two school year, multiplied by the following percentage:

(i) For a taxpayer whose primary residence is located outside the city of New York:

Qualified Gross Income	Percentage
Not over \$75,000	163%
Over \$75,000 but not over \$150,000	115%
Over \$150,000 but not over \$200,000	66%
Over \$200,000 but not over \$250,000	18%
Over \$250,000	No credit

(ii) For a taxpayer whose primary residence is located within the city of New York:

Qualified Gross Income	Percentage
Not over \$75,000	125%
Over \$75,000 but not over \$150,000	115%

Over \$150,000 but not over \$200,000	105%
Over \$200,000 but not over \$250,000	100%
Over \$250,000	No credit

(b) For a taxpayer who owned and primarily resided in real property receiving the enhanced STAR exemption or who received the enhanced STAR credit, the amount of the credit shall equal the STAR tax savings associated with such enhanced STAR exemption in the two thousand twenty-one--two thousand twenty-two school year, multiplied by sixty-six percent if the taxpayer's primary residence is located outside the city of New York, or one hundred ten percent if the taxpayer's primary residence is located within the city of New York.

(c) In no case may the amount of the credit allowed under this subsection exceed the school district taxes due with respect to the residence for that school year, nor shall any credit be allowed under this subsection if the amount determined pursuant to this paragraph is less than one hundred dollars.

(4) For purposes of this subsection:

(a) "Qualified gross income" means the adjusted gross income of the qualified taxpayer for the taxable year as reported for federal income tax purposes, or which would be reported as adjusted gross income if a federal income tax return were required to be filed. In computing qualified gross income, the net amount of loss reported on Federal Schedule C, D, E, or F shall not exceed three thousand dollars per schedule. In addition, the net amount of any other separate category of loss shall not exceed three thousand dollars. The aggregate amount of all losses included in computing qualified gross income shall not exceed fifteen thousand dollars.

(b) "STAR tax savings" means the tax savings attributable to the basic or enhanced STAR exemption, whichever is applicable, within a portion of a school district, as determined by the commissioner pursuant to subdivision two of section thirteen hundred six-a of the real property tax law.

(5) If the amount of the credit allowed under this subsection shall exceed the taxpayer's tax for the taxable year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. For

each year this credit is allowed, on or before October fifteenth of such year, or as soon thereafter as is practicable, the commissioner shall determine the taxpayer's eligibility for this credit utilizing the information available to the commissioner on the taxpayer's personal income tax return filed for the taxable year two years prior to the taxable year in which the credit is allowed. For those taxpayers whom the commissioner has determined eligible for this credit, the commissioner shall advance a payment in the amount specified in paragraph three of this subsection, which payment shall be issued, to the greatest extent practicable, by October thirty-first of each year the credit is allowed. A taxpayer who has failed to receive an advance payment that he or she believes was due to him or her, or who has received an advance payment that he or she believes is less than the amount that was due to him or her, may request payment of the claimed deficiency in a manner prescribed by the commissioner.

(6) A taxpayer shall not be eligible for the credit allowed under this subsection if the school district taxes levied upon the residence during the taxable year remain unpaid sixty days after the last date on which they could have been paid without interest, or in the case of a school district where such taxes are payable in installments, if such taxes remain unpaid sixty days after the last date on which the final installment could have been paid without interest. If the taxes remain unpaid on such sixtieth day, the amount of credit claimed by the taxpayer under this subsection or the amount of advance payment of credit received by the taxpayer pursuant to paragraph five of this subsection shall be added back as tax on the income tax return for the taxable year in which such sixtieth day occurs.

(7) Only one credit per residence shall be allowed per taxable year under this subsection. When two or more members of a residence are able to meet the qualifications for a qualified taxpayer, the credit shall be equally divided between or among such individuals. In the case of spouses who file a joint federal return but who are required to determine their New York taxes separately, the credit allowed pursuant to this subsection may be applied against the tax of either or divided between them as they may elect.

(n-2) Credit for farm donations to food pantries. (1) General. In the case of a taxpayer who is an eligible farmer, there shall be allowed a

credit, to be computed as hereinafter provided, against the tax imposed by this article for taxable years beginning on and after January first, two thousand eighteen. The amount of the credit shall be twenty-five percent of the fair market value of the taxpayer's qualified donations made to any eligible food pantry during the taxable year, not to exceed five thousand dollars per taxable year for taxable years ending before January first, two thousand twenty-six, and fifty percent of the fair market value of the taxpayer's qualified donations made to any eligible food pantry during the taxable year, not to exceed twenty thousand dollars per taxable year, for taxable years beginning on and after January first, two thousand twenty-six. If the taxpayer is a partner in a partnership or a shareholder of a New York S corporation, then the cap imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed to all partners or shareholders of such entity in the taxable year does not exceed five thousand dollars for taxable years ending before January first, two thousand twenty-six, and twenty thousand dollars for taxable years beginning on and after January first, two thousand twenty-six.

(2) Eligible farmer. For purposes of this subsection, the term "eligible farmer" shall have the same meaning as set forth in subsection (n) of this section.

(3) Qualified donation. For purposes of this subsection, the term "qualified donation" means a donation of any apparently wholesome food, as defined in section 170(e)(3)(C)(vi) of the internal revenue code, grown or produced within this state, by an eligible farmer to an eligible food pantry.

(4) Eligible food pantry. For purposes of this subsection, the term "eligible food pantry" means any food pantry, food bank, or other emergency food program operating within this state that has qualified for tax exemption under section 501(c)(3) of the internal revenue code.

(5) Determination of fair market value. For purposes of this subsection, to determine the fair market value of apparently wholesome food donated to an eligible food pantry, the standards set forth under section 170(e)(3)(C)(v) of the internal revenue code shall apply.

(6) Record of donation. To claim a credit under this subsection, a taxpayer must get and keep a receipt from the eligible food pantry showing: (i) the name of the eligible food pantry; (ii) the date and

location of the qualified donation; and (iii) a reasonably detailed description of the qualified donation. A letter or other written communication from the eligible food pantry acknowledging receipt of the contribution and containing the information in subparagraphs (i), (ii), and (iii) of this paragraph will serve as a receipt.

(7) Application of credit. A taxpayer shall be allowed a credit under this subsection against the tax imposed by this article. However, if the amount of credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article. Provided, however, the provisions of subsection (c) of section six hundred eighty-eight of this article notwithstanding, no interest will be paid thereon.

(o) Credit for employment of persons with disabilities. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for employing within the state a qualified employee.

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

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

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

(3) Amount of credit. Except as provided in paragraph four of this subsection, the amount of credit for taxable years beginning before January first, two thousand twenty-five shall be thirty-five percent of the first six thousand dollars in qualified first-year wages earned by each qualified employee and for taxable years beginning on or after January first, two thousand twenty-five shall be the first five thousand

dollars in qualified first-year wages earned by each qualified employee. "Qualified first-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employee, to services rendered during the one-year period beginning with the day the employee begins work for the taxpayer.

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

(5) Carryover. If the amount of credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

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

(p) Alternative fuels and electric vehicle recharging property credit.

(1) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for

alternative fuel vehicle refueling and electric vehicle recharging property placed in service during the taxable year.

(2) (a) Alternative fuel vehicle refueling property and electric vehicle recharging property. The credit under this subsection for alternative fuel vehicle refueling property or electric vehicle recharging property shall equal for each installation of property the lesser of five thousand dollars or the product of fifty percent and the cost of any such property less any costs paid from the proceeds of grants.

(b) To qualify for the credit, the property must:

(i) be located in this state;

(ii) constitute alternative fuel vehicle refueling property or electric vehicle recharging property; and

(iii) not be paid for from the proceeds of grants awarded before January first, two thousand fifteen, including grants from the New York state energy research and development authority or the New York power authority.

(3) Definitions. (A) The term "alternative fuel vehicle refueling property" means all of the equipment needed to dispense any fuel at least eighty-five percent of the volume of which consists of one or more of the following: natural gas, liquified natural gas, liquified petroleum, or hydrogen; and

(B) The term "electric vehicle recharging property" means all the equipment needed to convey electric power from the electric grid or another power source to an onboard vehicle energy storage system.

(4) Carryovers. If the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(5) Credit recapture. (A) If, at any time before the end of its recovery period, alternative fuel vehicle refueling property or electric vehicle recharging property ceases to be qualified, a recapture amount must be added back in the tax year in which such cessation occurs.

(B) Cessation of qualification. Alternative fuel vehicle refueling property or electric vehicle recharging property ceases to be qualified if:

(i) the property no longer qualifies as alternative fuel vehicle

refueling property or electric vehicle recharging property, or

(ii) fifty percent or more of the use of the property in a taxable year is other than in a trade or business in this state, or

(iii) the taxpayer receiving the credit under this subsection sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in clause (i) or (ii) of this subparagraph.

(C) Recapture amount. The recapture amount is equal to the credit allowable under this subsection multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

(6) Termination. The credit allowed by this subsection shall not apply in taxable years beginning after December thirty-first, two thousand twenty-eight.

(q) Qualified emerging technology company employment credit. (1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, provided:

(A) the taxpayer is a sole proprietor of a qualified emerging technology company, a member of a partnership which is a qualified emerging technology company, or a shareholder of a New York S corporation which is a qualified emerging technology company, as defined in section thirty-one hundred two-e of the public authorities law; and

(B) the average number of individuals employed full-time by such company in New York state during the taxable year is at least one hundred one percent of such company's base year employment. For the purposes of this subsection, "base year employment" means the average number of individuals employed full-time by such company in the state during the three taxable years immediately preceding the first taxable year in which the credit is claimed. Where such company provided full-time employment within the state during only a portion of such three-year period, then for purposes of this subsection, the term "three years" shall be deemed to refer instead to such portion, provided, however, the first taxable year for which this credit may be taken with respect to such company shall be the next year following the first full taxable year that such company had full-time employment in New York state.

(2) The credit shall be allowed only in the first taxable year in which the credit is claimed and in each of the next two taxable years, provided that the conditions of paragraph one of this subsection are satisfied in each taxable year.

(3) For the purposes of this subsection, average number of individuals employed full-time shall be computed by adding the number of such individuals employed by such company at the end of each quarter during each taxable year or other applicable period and dividing the sum so obtained by the number of such quarters occurring within such taxable year or other applicable period; provided, however, that in computing base year employment there shall be excluded therefrom any employee with respect to whom a credit provided for under subsection (k) of this section is claimed for the taxable year.

(4) The amount of the credit shall equal the product of one thousand dollars multiplied by the number of individuals employed full-time by such company in the taxable year that are in excess of one hundred percent of such company's base year employment.

(5) If the amount of credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(r) Qualified emerging technology company capital tax credit. (1) A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to one of the following percentages, per each qualified investment in a qualified emerging technology company as defined in section thirty-one hundred two-e of the public authorities law, made during the taxable year, and certified by the commissioner, either:

(A) ten percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during

the four years following the year in which the credit is first claimed;
or

(B) twenty percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the nine years following the year in which the credit is first claimed.

(C) "Qualified investment" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity not in corporate or partnership form in exchange for an ownership interest in such entity. The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed one hundred fifty thousand dollars in the case of investments made pursuant to subparagraph (A) of this paragraph and shall not exceed three hundred thousand dollars in the case of investments made pursuant to subparagraph (B) of this paragraph.

(2) (A) If the amount of the credit and carryovers of such credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years. In addition, the amount of such credit, and carryovers of such credit to the taxable year, deducted from the tax otherwise due may not, in the aggregate, exceed fifty percent of the tax imposed under section six hundred one computed without regard to any credit provided for by this section.

(B) In the case of a husband or wife who is required to file a separate return, the limitations provided for in subparagraph (c) of paragraph one of this subsection shall be seventy-five thousand dollars in lieu of one hundred fifty thousand dollars, and one hundred fifty thousand dollars in lieu of three hundred thousand dollars, unless the

spouse of the taxpayer has no credit allowable under this subsection for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(C) In the case of an estate or trust, the limitations provided for in paragraph one of this subsection shall be reduced to an amount which bears the same ratio to one hundred fifty thousand dollars and an amount which bears the same ratio to three hundred thousand dollars as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(3) (A) Where a taxpayer sells, transfers or otherwise disposes of corporate stock, a partnership interest or other ownership interest arising from the making of a qualified investment which was the basis, in whole or in part, for the allowance of the credit provided for under subparagraph (A) of paragraph one of this subsection, or where an investment which was the basis for such allowance is, in whole or in part, recovered by such taxpayer, and such disposition or recovery occurs during the taxable year or within forty-eight months from the close of the taxable year with respect to which such credit is allowed, the taxpayer shall add back, with respect to the taxable year in which the disposition or recovery described above occurred, the required portion of the credit originally allowed.

(B) Where a taxpayer sells, transfers or otherwise disposes of corporate stock, a partnership interest or other ownership interest arising from the making of a qualified investment which was the basis, in whole or in part, for the allowance of the credit provided for under subparagraph (B) of paragraph one of this subsection, or where an investment which was the basis for such allowance is in any manner, in whole or in part, recovered by such taxpayer, and such disposition or recovery occurs during the taxable year or within one hundred eight months from the close of the taxable year with respect to which such credit is allowed, the taxpayer shall add back, with respect to the taxable year in which the disposition or recovery described in subparagraph one of this paragraph occurred the required portion of the credit originally allowed.

(C) The required portion of the credit originally allowed shall be the product of (i) the portion of such credit attributable to the property disposed of and (ii) the applicable percentage.

(D) The applicable percentage shall be:

(i) for credits allowed pursuant to subparagraph (A) of paragraph one of this subsection:

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

(II) seventy-five percent, if the disposition or recovery occurs more than twelve but not more than twenty-four months after the end of the taxable year with respect to which the credit is allowed,

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

(IV) twenty-five percent, if the disposition or recovery occurs more than thirty-six months but not more than forty-eight months after the end of the taxable year with respect to which the credit is allowed; or

(ii) for credits allowed pursuant to subparagraph (B) of paragraph one of this subsection:

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

(II) eighty percent, if the disposition or recovery occurs more than twelve but not more than forty-eight months after the end of the taxable year with respect to which the credit is allowed,

(III) sixty percent, if the disposition or recovery occurs more than forty-eight months but not more than seventy-two months after the end of the taxable year with respect to which the credit is allowed,

(IV) forty percent, if the disposition or recovery occurs more than seventy-two months but not more than ninety-six months after the end of the taxable year with respect to which the credit is allowed, or

(V) twenty percent, if the disposition or recovery occurs more than ninety-six months but not more than one hundred eight months after the end of the taxable year with respect to which the credit is allowed.

(s) Credit for purchase of an automated external defibrillator. A taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of credit shall be

the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased.

(t) College tuition credit. (1) General. A resident taxpayer shall be allowed the option of claiming a credit, to be computed as provided in paragraph four of this subsection, against the tax imposed by this article, or an itemized deduction, to be computed as provided in paragraph four of subsection (d) of section six hundred fifteen of this article, for allowable college tuition expenses.

(2) Allowable and qualified college tuition expenses. For the purposes of this credit and the itemized deduction provided by paragraph four of subsection (d) of section six hundred fifteen of this article:

(A) The term "allowable college tuition expenses" shall mean the amount of qualified college tuition expenses of eligible students paid by the taxpayer during the taxable year, limited to ten thousand dollars for each such student;

(B) The term "eligible student" shall mean the taxpayer, the taxpayer's spouse, and any dependent of the taxpayer with respect to whom the taxpayer is allowed an exemption under section six hundred sixteen of this article for the taxable year;

(C) The term "qualified college tuition expenses" shall mean the tuition required for the enrollment or attendance of an eligible student at an institution of higher education. Provided, however, tuition payments made pursuant to the receipt of any scholarships or financial aid, or tuition required for enrollment or attendance in a course of study leading to the granting of a post baccalaureate or other graduate degree, shall be excluded from the definition of "qualified college tuition expenses".

(D) Expenses paid by dependent. If an exemption under section six hundred sixteen of this article with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins,

(i) no credit under this subsection or deduction under paragraph four of subsection (d) of section six hundred fifteen of this article shall be allowed to such individual for such individual's taxable year, and

(ii) for purposes of such credit or deduction, qualified college tuition expenses paid by such individual during such individual's

taxable year shall be treated as paid by such other taxpayer.

(3) Institution of higher education. For the purposes of this credit and the itemized deduction provided by paragraph four of subdivision (d) of section six hundred fifteen of this article, the term "institution of higher education" shall mean any institution of higher education or business, trade, technical or other occupational school, recognized and approved by the regents, or any successor organization, of the university of the state of New York or accredited by a nationally recognized accrediting agency or association accepted as such by the regents, or any successor organization, of the university of the state of New York, which provides a course of study leading to the granting of a post-secondary degree, certificate or diploma.

(4) Amount of credit. If allowable college tuition expenses are less than five thousand dollars, the amount of the credit provided under this subsection shall be equal to the applicable percentage of the lesser of allowable college tuition expenses or two hundred dollars. If allowable college tuition expenses are five thousand dollars or more, the amount of the credit provided under this subsection shall be equal to the applicable percentage of the allowable college tuition expenses multiplied by four percent. Such applicable percentage shall be twenty-five percent for taxable years beginning in two thousand one, fifty percent for taxable years beginning in two thousand two, seventy-five percent for taxable years beginning in two thousand three and one hundred percent for taxable years beginning after two thousand three.

(5) Refundability. The credit under this subsection shall be allowed against the taxes imposed by this article for the taxable year reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess.

(6) Limitation. No credit shall be allowed under this subsection to a taxpayer who claims the itemized deduction provided under paragraph four of subdivision (d) of section six hundred fifteen of this article.

* (t-1) IMB credit for energy taxes. (1) Allowance of credit. A taxpayer which is a sole proprietor of an industrial or manufacturing business (IMB), or a member of a partnership which is an IMB, shall be

allowed a credit for energy taxes, to be computed as provided in section fourteen-a of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* NB Expired for taxable years ending on and after January 1, 2007

** (u) Musical and theatrical production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four-a of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

** NB Repealed January 1, 2030

* (v) Television writers' and directors' fees and salaries credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four-b of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* NB Effective on the first of January next succeeding the date the department of economic development provides notice to the legislative bill drafting commission of a determination pursuant to § 6 sb 2 (b) of chapter 683 of 2019

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

(2) Application of credit. If the amount of credit allowable under

this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

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

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

(2) Carryovers. If the amount of the credit and carryovers of such credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess, as well as any part of the credit or carryovers of such credit, or both, may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

(aa) Long-term care insurance credit. (1) Residents. There shall be allowed a credit against the tax imposed by this article in an amount equal to twenty percent of the premiums paid during the taxable year for long-term care insurance. The credit amount shall not exceed one thousand five hundred dollars and shall be allowed only if the amount of New York adjusted gross income required to be reported on the return is less than two hundred fifty thousand dollars. In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred

seventeen of the insurance law. If the amount of the credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(2) Nonresidents and part-year residents. In the case of a nonresident taxpayer or a part-year resident taxpayer, the credit determined under this subsection shall be limited to the amount determined by multiplying the amount of such credit by the New York source fraction as set forth in paragraph three of subsection (e) of section six hundred one of this article. The credit as so limited shall be applied as provided in paragraph one of this subsection.

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

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(cc) QEZE tax reduction credit. Allowance of credit. A taxpayer which is a sole proprietor of a qualified empire zone enterprise (QEZE), or a member of a partnership which is a QEZE, shall be allowed a QEZE tax reduction credit against the tax imposed by subsections (a) through (e) of section six hundred one of this part.

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

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six

hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(gg) Empire state film production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section twenty-four of this chapter shall be allowed a credit to be computed as provided in such section twenty-four against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(gg-1) Empire state independent film production credit. (1) Allowance

of credit. A taxpayer who is eligible pursuant to section twenty-four-d of this chapter shall be allowed a credit to be computed as provided in such section twenty-four-d against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(hh) Nursing home assessment credit. (1) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article equal to the amount that directly relates to the assessment imposed on a residential health care facility pursuant to paragraph (b) of subdivision two of section twenty-eight hundred seven-d of the public health law which is separately stated and accounted for on the billing statement of a resident of a residential health care facility and is paid directly by the individual taxpayer.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* (jj) Empire state commercial production credit. (1) Allowance of credit. A taxpayer that is eligible pursuant to the provisions of section twenty-eight of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty-nine.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interests shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* NB There are 2 sb (jj)'s

* (jj) Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section twenty-eight of this chapter, as added by part X of chapter sixty-two of the laws of two thousand six, against the tax imposed by this article. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

* NB There are 2 sb (jj)'s

(kk) Conservation easement tax credit. (1) Credit allowed. In the case of a taxpayer who owns land that is subject to a conservation easement held by a public or private conservation agency, there shall be allowed a credit for twenty-five percent of the allowable school district, county and town real property taxes on such land. In no event shall the credit allowed under this subsection in combination with any other credit for such school district, county and town real property taxes under this section exceed such taxes.

(2) Conservation easement. For purposes of this subsection, the term "conservation easement" means a perpetual and permanent conservation easement as defined in article forty-nine of the environmental conservation law that serves to protect open space, scenic, natural

resources, biodiversity, agricultural, watershed and/or historic preservation resources. Any conservation easement for which a tax credit is claimed under this subsection shall be filed with the department of environmental conservation, as provided for in article forty-nine of the environmental conservation law and such conservation easement shall comply with the provisions of title three of such article, and the provisions of subdivision (h) of section 170 of the internal revenue code. Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered a conservation easement under this subsection.

(3) Land. For purposes of this subsection, the term "land" means a fee simple title to real property located in this state, with or without improvements thereon; rights of way; water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property, excluding buildings, structures, or improvements.

(4) Public or private conservation agency. For purposes of this subsection, the term "public or private conservation agency" means any state, local, or federal governmental body; or any private not-for-profit charitable corporation or trust which is authorized to do business in the state of New York, is organized and operated to protect land for natural resources, conservation or historic preservation purposes, is exempt from federal income taxation under section 501(c)(3) of the internal revenue code, and has the power to acquire, hold and maintain land and/or interests in land for such purposes.

(5) Credit limitation. The amount of the credit that may be claimed by a taxpayer pursuant to this subsection shall not exceed five thousand dollars in any given year.

(6) Application of the credit. If the amount of the credit under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid therein.

(11) Home heating system credit. (1) Allowance of credit for replacement. A taxpayer shall be allowed a credit against the tax

imposed by this article for costs incurred on or after July first, two thousand six and before July first, two thousand seven by a taxpayer which are directly associated with the replacement of an existing home heating system, in his or her principal residence, if such residence is located in this state, provided such home heating system after such replacement qualifies for, and is labeled with, an Energy Star label by the manufacturer, pursuant to an agreement among the manufacturer, the United States environmental protection agency and the United States department of energy. The amount of the credit shall be equal to fifty percent of the cost of such replacement but such credit shall not exceed five hundred dollars.

(2) Multiple taxpayers. If the principal residence is shared by two or more taxpayers, the amount of the credit allowable under this subsection for each such eligible taxpayer shall be prorated according to the percentage of the total expenditure for such replacement incurred by each taxpayer.

(3) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(mm) Clean heating fuel credit. (1) A taxpayer shall be allowed a credit against the tax imposed by this article. Such credit, to be computed as hereinafter provided, shall be allowed for bioheating fuel, used for space heating or hot water production for residential purposes within this state and purchased on or after July first, two thousand six and before July first, two thousand seven and on or after January first, two thousand eight and before January first, two thousand twenty-nine. Such credit shall be \$0.01 per percent of biodiesel per gallon of bioheating fuel, not to exceed twenty cents per gallon, purchased by such taxpayer. Provided, however, that on or after January first, two thousand seventeen, this credit shall not apply to bioheating fuel that is less than six percent biodiesel per gallon of bioheating fuel.

(2) For purposes of this subsection, the following definitions shall apply:

(a) "Biodiesel" shall mean a fuel comprised exclusively of mono-alkyl

esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751.

(b) "Bioheating fuel" shall mean a fuel comprised of biodiesel or renewable hydrocarbon diesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials designation D 396 or D 975.

(3) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(nn) Qualified emerging technology company facilities, operations and training credit. (1) A taxpayer that is a qualified emerging technology company pursuant to the provisions of section thirty-one hundred two-e (and specifically for the activities referenced in paragraph (b) of subdivision one of such section thirty-one hundred two-e) of the public authorities law, and that meets the eligibility requirements in paragraph two of this subsection, shall be allowed a credit against the tax imposed by this article. The amount of credit shall be equal to the sum (or pro rata share of the sum in the case of a partnership) of the amounts specified in paragraphs three, four, and five of this subsection, subject to the limitations in paragraph six of this subsection.

(2) An eligible taxpayer shall (i) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in New York state,

(ii) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during its taxable year, and

(iii) have gross revenues, along with the gross revenues of its affiliates and related members, not exceeding twenty million dollars for the taxable year immediately preceding the year the taxpayer is allowed a credit under this subsection. For purposes of this paragraph, the term "related member" shall have the same meaning as set forth in clauses (A) and (B) of subparagraph one of paragraph (o) of subdivision 9 of section

two hundred eight of this chapter, and the term "affiliates" shall mean those corporations that are members of the same affiliated group (as defined in section fifteen hundred four of the internal revenue code) as the taxpayer.

(3) An eligible taxpayer shall be allowed a credit for eighteen per centum of the cost or other basis for federal income tax purposes of research and development property as defined in subparagraph (B) of paragraph two of subsection (a) of this section that is acquired by the taxpayer by purchase as defined in section 179(d) of the internal revenue code and is placed in service during the taxable year. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (i) cost or other basis for federal income purposes for property used in the testing or inspection of materials and products,

(ii) the costs or expenses associated with quality control of the research and development,

(iii) fees for use of sophisticated technology facilities and processes, and

(iv) fees for production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under the activities listed in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law. The costs, expenses and other amounts for which a credit is allowed and claimed under this paragraph shall not be used in the calculation of any other credit allowed under this article.

(4) An eligible taxpayer shall be allowed a credit for nine per centum of "qualified research expenses", paid or incurred by the taxpayer in the taxable year. "Qualified research expenses" shall mean expenses associated with in-house research, use of sophisticated technology facilities and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall be eligible for such credit. In no

case shall the credit allowed by this paragraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this paragraph paid or incurred by the taxpayer.

(a) The amount of credit shall be one hundred percent of the training expenses described in subparagraph (c) of this paragraph, subject to a limitation of no more than four thousand dollars per employee per year for such training expenses.

(b) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in New York state that

(i) directly relates to the activities referred to in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law, and

(ii) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(c) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, and software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or

any affiliate of the taxpayer, paid or reimbursed by the taxpayer. Qualified high technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit allowed by this subsection unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred and eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in house or shared training outside of a New York state higher education institution or the use of consultants outside of credit granting courses whether such consultants function inside of such higher education institution or not.

(d) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within New York state, which provides space and business support services to taxpayers, to another site, the credit provided in this subsection shall be allowed for all expenditures referenced in subparagraph (c) of this paragraph paid or incurred in the two preceding taxable years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such New York site and are employed and primarily located by the taxpayer in New York. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subsection that were paid or incurred in the taxable year that the taxpayer relocated from such a facility. Such expenditures shall include expenses paid or incurred for an eligible employee who is a full-time, full-year employee of said taxpayer during the taxable year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referenced in subparagraph (c) of this paragraph, provided such employee

received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such an employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse such an employee for qualified expenditures paid by the employee during such two preceding years. The credit provided under this subparagraph shall be allowed, in any year that said taxpayer qualifies as an eligible taxpayer.

(e) For purposes of this subsection the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(f) For the purposes of this subsection the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in New York state. Such entity's primary activity must be an activity described in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in New York state. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subsection for four consecutive taxable years, except, if a taxpayer is located in an academic incubator facility and relocates within New York state to a nonacademic incubator site, then the taxpayer (i) may make a revocable election to defer the credit provided under this subsection to the first taxable year beginning after the taxpayer relocates from an academic incubator facility, and (ii) shall be eligible for such credit for five consecutive years. In no case shall the credit allowed by this subsection to a taxpayer exceed two hundred fifty thousand dollars per

year. If the taxpayer is a partner in a partnership or shareholder of a New York S corporation, then the limit imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed two hundred fifty thousand dollars.

(7) If the amount of credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(8) The credit allowed under this subsection shall not be applicable for taxable years beginning on or after January first, two thousand twelve.

(oo) Credit for rehabilitation of historic properties. (1) (A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand thirty, a taxpayer, or a transferee of such a taxpayer as described in paragraph seven of this subsection, shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure, and one hundred fifty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure that is a small project, under internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47, with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars. For taxable years beginning on or after January first, two thousand thirty, a taxpayer, or a transferee of such a taxpayer as described in paragraph seven of this subsection, shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47, with respect to a certified historic structure located within the state; provided, however, the credit shall not exceed

one hundred thousand dollars.

(B) If the taxpayer or transferee is a partner in a partnership or a shareholder of a New York S corporation, then the credit cap imposed in subparagraph (A) of this paragraph shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed the credit cap that is applicable in that taxable year.

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

(3) If the taxpayer is allowed a credit pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subsection and that credit pursuant to such section 47 is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subsection must be added back by the taxpayer or transferee in the same taxable year and in the same proportion as the federal recapture.

(4) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(5) To be eligible for the credit allowable under this subsection the rehabilitation project shall be in whole or in part located within a census tract which is identified as being at or below one hundred percent of the state median family income as calculated as of April first of each year using the most recent five year estimate from the American community survey published by the United States Census bureau. If there is a change in the most recent five year estimate, a census tract that qualified for eligibility under this program before information about the change was released will remain eligible for a credit under this subsection for an additional two calendar years. The eligibility restrictions set forth in this paragraph shall not be applicable if:

(A) a qualified rehabilitation project is undertaken within a state park, state historic site, or other land owned by the state, that is

under the jurisdiction of the office of parks, recreation and historic preservation; or

(B) a qualified rehabilitation project is undertaken for the provision of affordable housing and the taxpayer has entered into a regulatory agreement with any state or federal agency or authority, or any other government entity that is authorized to engage in the financing, construction or oversight of affordable housing within such entity's jurisdiction, and where such regulatory agreement sets forth affordability requirements applicable for a period of not less than thirty years and that is binding on all successors of the taxpayer.

(6) For purposes of this subsection the term "small project" means qualified rehabilitation expenditures totaling two million five hundred thousand dollars or less.

(7)(A) A taxpayer allowed a credit pursuant to this subsection may transfer the credit, in whole or in part, to another person or entity, who shall be referred to as the transferee, without regard to how any tax credit authorized pursuant to section forty-seven of the internal revenue code with respect to a qualified rehabilitation project may be allocated and notwithstanding that such other person or entity owns no interest in the qualified rehabilitation project or in an entity with an ownership interest in the qualified rehabilitation project. A transferee may not transfer any credit, or portion thereof, acquired by transfer.

(B) A taxpayer seeking to transfer a credit allowed pursuant to this subsection must enter into a transfer contract with the transferee. The transfer contract must specify:

(i) the building identification numbers for all buildings in the project;

(ii) the date each building was placed into service;

(iii) the schedule of years for which the transfer credit may be claimed and the amount of credit previously claimed;

(iv) the amount of consideration received by the taxpayer for the transfer credit; and

(v) the amount of credit being transferred.

(C) No transfer shall be effective unless the taxpayer allowed a credit pursuant to this subsection and seeking to transfer the credit files a transfer application with the commissioner of parks, recreation and historic preservation prior to the transfer and such transfer

application is approved. The transfer application shall include the name and federal identification numbers of the taxpayer and each proposed transferee, the amount of credit proposed to be transferred to each proposed transferee, a copy of the transfer contract, and such other information as the commissioner or the commissioner of parks, recreation and historic preservation may require. The commissioner of parks, recreation and historic preservation shall approve or deny each transfer application and, if an application is denied, shall issue a written determination to the taxpayer. If the transfer is approved, the commissioner of parks, recreation and historic preservation shall issue a transfer approval certificate that provides the name of the transferor and all transferees, the amount of credit being transferred and such other information as the commissioner of parks, recreation and historic preservation and the commissioner deem necessary. A copy of the transfer approval certificate must be attached to each transferee's tax return. The commissioner of parks, recreation and historic preservation, in consultation with the commissioner, may establish such other procedures and standards deemed necessary for the transferability of credits allowed under this subsection.

(D) The commissioner of parks, recreation and historic preservation shall forward copies of all transfer applications and attachments thereto and approval certificates to the commissioner within thirty days after the transfer is approved.

(E) A taxpayer allowed a credit pursuant to section forty-seven of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subsection shall remain solely liable for all obligations and liabilities imposed on the taxpayer with respect to the credit allowed by this subsection, none of which shall apply to a party to whom the credit has been subsequently transferred.

(pp) Historic homeownership rehabilitation credit. (1) For taxable years beginning on or after January first, two thousand seven, a taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be equal to twenty percent of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic home and may be allowed in the taxable year in which the final

certification step of the certified rehabilitation is completed.

(A) If such expenditures relate only to exterior work, the credit shall be allowed for qualified rehabilitation expenditures if the exterior work has been approved by a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law or by the office of parks, recreation and historic preservation.

(B) If such expenditures relate to both exterior and interior work, the credit shall be allowed for qualified rehabilitation expenditures that have been approved by the office of parks, recreation and historic preservation or by a local government certified pursuant to section 101(c)(1) of the national historic preservation act. Under this subparagraph, approval is necessary for the qualified rehabilitation expenditures related to both the exterior work on the qualified historic home and interior work affecting primary significant historic spaces of the qualified historic home.

(2) (A) With respect to any particular residence of a taxpayer, the credit allowed under paragraph one of this subsection shall not exceed fifty thousand dollars for taxable years beginning on or after January first, two thousand ten and before January first, two thousand twenty-five and twenty-five thousand dollars for taxable years beginning on or after January first, two thousand twenty-five. In the case of a husband and wife, the amount of the credit shall be divided between them equally or in such other manner as they may both elect. If a taxpayer incurs qualified rehabilitation expenditures in relation to more than one residence in the same year, the total amount of credit allowed under paragraph one of this subsection for all such expenditures shall not exceed fifty thousand dollars for taxable years beginning on or after January first, two thousand ten and before January first, two thousand twenty-five and twenty-five thousand dollars for taxable years beginning on or after January first, two thousand twenty-five.

(B) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand twenty-five, if the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, and the taxpayer's New York adjusted gross income for such year does not exceed sixty thousand dollars, the excess shall be treated as an overpayment of tax to be credited or refunded in

accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. If the taxpayer's New York adjusted gross income for such year exceeds sixty thousand dollars, the excess credit that may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. For taxable years beginning on or after January first, two thousand twenty-five, if the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(3)(A) The term "qualified rehabilitation expenditure" means, for purposes of this subsection, any amount properly chargeable to a capital account:

(i) in connection with the certified rehabilitation of a qualified historic home, and

(ii) for property for which depreciation would be allowable under section 168 of the internal revenue code if the qualified historic home were used in a trade or business.

(B) Such term shall not include (i) the cost of acquiring any building or interest therein, (ii) any expenditure attributable to the enlargement of an existing building, or (iii) any expenditure made prior to January first, two thousand seven.

(C) Such term shall not include any expenditure in connection with the rehabilitation of a qualified historic home unless at least five percent of the total expenditures made in the rehabilitation process are allocable to the rehabilitation of the exterior of such building.

(D) If only a portion of a building is used as a residence of the taxpayer, only qualified rehabilitation expenditures which are properly allocable to such residential portion shall be taken into account under this subsection.

(4)(A) The term "certified rehabilitation" means, for purposes of this subsection, any rehabilitation of a certified historic structure which has been approved and certified as being consistent with the standards established by the commissioner of parks, recreation and historic preservation for rehabilitation by the office of parks, recreation and historic preservation, a local government certified pursuant to section 101(c)(1) of the national historic preservation act or a local landmark

commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law.

(B) A certified rehabilitation shall require:

(i) an initial certification that the structure meets the definition of the term "certified historic structure";

(ii) a second certification, to be issued prior to construction, certifying that the proposed rehabilitation work is consistent with standards established by the commissioner of parks, recreation and historic preservation for rehabilitation; and

(iii) a final certification issued when construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed. Such final certification shall be acceptable as proof that the expenditures related to such construction qualify as qualified rehabilitation expenditures for purposes of the credit allowed under either subparagraph (A) or (B) of paragraph one of this subsection.

(5)(A) The term "qualified historic home" means, for purposes of this subsection, a certified historic structure located within New York state:

(i) which has been substantially rehabilitated,

(ii) which, or any portion of which, is owned, in whole or part, by the taxpayer,

(iii) in which the taxpayer resides during the taxable year in which the taxpayer is allowed a credit under this subsection, and

(iv) (1) which is in whole or in part a targeted area residence within the meaning of section 143(j) of the internal revenue code; or (2) is located within a census tract which is identified as being at or below one hundred percent of the state median family income in the most recent federal census; or (3) which is located in a city with a population of less than one million with a poverty rate greater than fifteen percent, rounded to the nearest whole number, in the most recent five year estimate from the American community survey published by the United States census bureau.

(B) A building shall be treated as having been "substantially rehabilitated" if the qualified rehabilitation expenditures in relation to such building total five thousand dollars or more.

(6) The term "certified historic structure" means, for purposes of

this subsection, any building (and its structural components) which:

- (i) is listed in the state or national register of historic places, or
- (ii) is located in a state or national registered historic district and is certified as being of historic significance to the district.

(7) If the taxpayer holds stock as a tenant-shareholder in a cooperative housing corporation, such taxpayer shall be treated as owning the house or apartment which the taxpayer is entitled to occupy as such shareholder.

(8)(A) A percentage of the total expenditures made in the rehabilitation of the exterior of a building containing cooperative or condominium dwelling units shall be attributed to each such unit within the building based on the percentage of space each such unit occupies within the building.

(B) In the case of a building where less than the entire building is used as a residence of the taxpayer, only the portion of the total expenditures made in the rehabilitation of the building that is attributable to the residence of the taxpayer shall be treated as qualified rehabilitation expenditures for the purposes of this subsection.

(C) In the case of a building that is owned by and is a residence of two or more persons, other than a husband and wife, the portion of the total expenditures made in the rehabilitation of the building that is attributable to each taxpayer shall be equal to the taxpayer's share of ownership in such building.

(9) In the case of a building other than a building to which paragraph ten of this subsection applies, qualified rehabilitation expenditures shall be treated for purposes of this subsection as made on the date of the final certification referred to in clause (iii) of subparagraph (B) of paragraph four of this subsection.

(10)(A) In the case of a purchased qualified historic home, the taxpayer shall be treated as having made, on the date of purchase, the qualified rehabilitation expenditures made by the seller of such home. For purposes of this subsection, expenditures made by the seller shall be deemed qualified rehabilitation expenditures if such expenditures, if made by the purchaser, would have so qualified.

(B) The term "purchased qualified historic home" means any qualified historic home purchased by the taxpayer if:

(i) the taxpayer is the first purchaser of such home after the date of the final certification referred to in clause (iii) of subparagraph (B) of paragraph four of this subsection, and the purchase occurs within five years after such date,

(ii) the taxpayer, during the taxable year in which the taxpayer is allowed a credit under this subsection, resides in such home,

(iii) no credit was allowed to the seller under this subsection with respect to such rehabilitation, and

(iv) the taxpayer is furnished with such information as the commissioner determines is necessary to determine any credit under this subsection.

(11)(A) If, before the end of the two-year period beginning either on the date of the final certification referred to in clause (iii) of subparagraph (B) of paragraph four of this subsection or, if paragraph ten of this subsection applies, on the date of purchase of such building by the taxpayer, the taxpayer disposes of such taxpayer's interest in such building, or such building ceases to be used as a residence of the taxpayer, the taxpayer's tax imposed by this article for the taxable year in which such disposition or cessation occurs shall be increased by the recapture portion of the credit allowed under this subsection for all prior taxable years with respect to such rehabilitation.

(B) For purposes of subparagraph (A) of this paragraph, the recapture portion shall be the product of the amount of credit claimed by the taxpayer multiplied by a ratio, the numerator of which is equal to twenty-four less the number of months the building is used as the taxpayer's residence and the denominator of which is twenty-four.

(12) Nothing contained in this subsection shall be construed to impose a duty upon a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law or a local government certified pursuant to section 101(c)(1) of the national historic preservation act to undertake any review or approval of an application for the certification of the rehabilitation of historic structures and of rehabilitation expenditures provided for in this subsection.

* (qq) Excelsior jobs program credit. (1) A taxpayer will be allowed a credit, to the extent allowed under section thirty-one of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* NB There are 3 sb§ (qq)'s

* (qq) Empire state film post production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section thirty-one of this chapter shall be allowed a credit to be computed as provided in such section thirty-one against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB There are 3 sb§ (qq)'s

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

(2) If the amount of credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

* NB There are 3 sb§ (qq)'s

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

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* (ss) Economic transformation and facility redevelopment program tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to the extent allowed under section thirty-five of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* NB Repealed December 31, 2026

* (tt) New York youth jobs program tax credit. (1) A taxpayer that has been certified by the commissioner of labor as a qualified employer pursuant to section twenty-five-a of the labor law and received an annual final certificate of tax credit from such commissioner shall be allowed a credit against the tax imposed by this article equal to the amount listed on the annual final certificate of tax credit issued by the commissioner of labor pursuant to section twenty-five-a of the labor law. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in an S corporation that has received its annual final certificate of tax credit from the commissioner of labor as a qualified employer pursuant to section twenty-five-a of the labor law shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation. If the qualified employer's taxable year is a calendar year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the calendar year return for which the

annual final certificate of tax credit was issued. If the qualified employer's taxable year is a fiscal year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the return for the fiscal year that encompasses the date on which the annual final certificate of tax credit is issued. For the purposes of this subsection, the term "qualified employee" shall have the same meaning as set forth in subdivision (b) of section twenty-five-a of the labor law.

(2) If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article. Provided, however, no interest will be paid thereon.

(3) The taxpayer shall be required to attach to its tax return its annual final certificate of tax credit issued by the commissioner of labor pursuant to section twenty-five-a of the labor law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the annual final certificate of tax credit.

Notwithstanding any provision of this chapter to the contrary, the commissioner and the commissioner's designees may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company, a partner in a partnership, or a shareholder in a subchapter S corporation, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

* NB There are 3 sb (tt)'s

* (tt) Empire state jobs program retention credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section thirty-six of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be

paid thereon.

* NB There are 3 sb (tt)'s

* (tt) Credit for companies who provide transportation to individuals with disabilities. (1) Allowance and amount of credit. A taxpayer, who provides a taxicab service as defined in section one hundred forty-eight-a of the vehicle and traffic law, or a livery service as defined in section one hundred twenty-one-e of the vehicle and traffic law, shall be allowed a credit, to be computed as provided in this subsection, against the tax imposed by this article. The amount of the credit shall be equal to the incremental cost associated with upgrading a vehicle so that it is accessible by individuals with disabilities as defined in paragraph two of this subsection. Provided, however, that such credit shall not exceed fifteen thousand dollars per electric vehicle and ten thousand dollars per any other vehicle. For purposes of this subsection, purchases of new vehicles that are initially manufactured to be accessible for individuals with disabilities and for which there is no comparable make and model that does not include the equipment necessary to provide accessibility to individuals with disabilities, the credit shall be fifteen thousand dollars per electric vehicle and ten thousand dollars per any other vehicle.

(2) Definitions. The term "accessible by individuals with disabilities" shall, for the purposes of this subsection, refer to a vehicle that complies with federal regulations promulgated pursuant to the Americans with Disabilities Act applicable to vans under twenty-two feet in length, by the federal Department of Transportation, in Code of Federal Regulations, title 49, parts 37 and 38 and the Federal Motor Vehicle Safety Standards, Code of Federal Regulations, title 49, part 571. The term "electric vehicle" shall, for the purposes of this subsection, have the same meaning as in section sixty-six-s of the public service law.

(3) Application of credit. If the amount of the credit shall exceed the taxpayer's tax for such year the excess shall be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

* NB Repealed December 31, 2028

* NB There are 3 sb (tt)'s

(uu) Alcoholic beverage production credit. A taxpayer shall be allowed

a credit, to be computed as provided in section thirty-seven of this chapter, against the tax imposed by this article. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(vv) Family tax relief credit. 1. An individual taxpayer who meets the eligibility standards in paragraph two of this subsection shall be allowed a credit against the taxes imposed by this article of three hundred fifty dollars per return for tax years two thousand fourteen, two thousand fifteen, and two thousand sixteen.

2. To be eligible for the credit, the taxpayer (or taxpayers filing joint returns) on the personal income tax return filed for the taxable year, must (a) be a resident, (b) claim one or more dependent children who were under the age of seventeen on the last day of the taxable year, (c) have New York adjusted gross income of at least forty thousand dollars but no greater than three hundred thousand dollars, and (d) have a tax liability as determined under paragraph three of this subsection of greater than or equal to zero.

3. For purposes of this subsection, tax liability shall be determined by applying the tax rate calculations in sections six hundred one and six hundred one-a of this part to the taxpayer's taxable income and then subtracting from that amount any other tax credits allowed under this section or section six hundred twenty of this article.

4. If the amount of the credit allowed under this subsection shall exceed the taxpayer's tax for the taxable year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(ww) Tax-free NY area tax elimination credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided under section forty of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under

this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

(xx) Real property tax credit for manufacturers. (1) A qualified New York manufacturer will be allowed a credit equal to twenty percent of the real property tax it paid during the taxable year for real property owned by such manufacturer in New York which was principally used during the taxable year for manufacturing to the extent not deducted in computing New York adjusted gross income. This credit will not be allowed if the real property taxes that are the basis for this credit are included in the calculation of another credit claimed by the taxpayer.

(2)(A) The term qualified New York manufacturer has the same meaning as under subparagraph (vi) of paragraph (a) of subdivision one of section two hundred ten of this chapter.

(B) (i) The term real property tax means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to article eighteen or nineteen of the real property tax law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by such article eighteen or nineteen, whichever is applicable. The term real property tax does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when (I) the property subject to the charge is limited to the property that benefits from the charge, or (II) the amount of the charge is determined by the benefit to the property assessed, or (III) the improvement for which the charge is assessed tends to increase the property value.

(ii) In addition, the term real property tax includes taxes paid by the taxpayer upon real property principally used during the taxable year by the taxpayer in manufacturing where the taxpayer leases such real

property from an unrelated third party if the following conditions are satisfied: (I) the tax must be paid by the taxpayer as lessee pursuant to explicit requirements in a written lease, and (II) the taxpayer as lessee has paid such taxes directly to the taxing authority and has received a written receipt for payment of taxes from the taxing authority. In the case of a taxpayer that, during the taxable year, is principally engaged in the production of goods by farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, the taxpayer is eligible if the taxpayer satisfies the conditions in the preceding sentence and the taxpayer leases such real property from a related or unrelated party.

(iii) The term real property tax does not include a payment made by the taxpayer in connection with an agreement for the payment in lieu of taxes on real property, whether such property is owned or leased by the taxpayer.

(iv) The real property taxes must be paid by the taxpayer in the year such taxes become a lien on the real property.

(3) Credit recapture. Where a qualified New York manufacturer's real property taxes which were the basis for the allowance of the credit provided for under this subdivision are subsequently reduced as a result of a final order in any proceeding under article seven of the real property tax law or other provision of law, the taxpayer shall add back, in the taxable year in which such final order is issued, the excess of (i) the amount of credit originally allowed for a taxable year over (ii) the amount of credit determined based upon the reduced real property taxes. If such final order reduces real property taxes for more than one year, the taxpayer must determine how much of such reduction is attributable to each year covered by such final order and calculate the amount of credit which is required by this subdivision to be recaptured for each year based on such reduction.

(4) If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided however, no interest will be paid thereon.

(yy) The tax-free NY area excise tax on telecommunication services credit. A taxpayer that is a business or owner of a business that is

located in a tax-free NY area approved pursuant to article twenty-one of the economic development law shall be allowed a credit equal to the excise tax on telecommunication services imposed by section one hundred eighty-six-e of this chapter and passed through to such business during the taxable year to the extent not otherwise deducted in computing New York adjusted gross income. This credit may be claimed only where any tax imposed by such section one hundred eighty-six-e has been separately stated on a bill from the provider of telecommunication services and paid by such taxpayer with respect to such services rendered within a tax-free NY area during the taxable year. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

(zz) Workers with disabilities tax credit. (1) A qualified employer, as defined in paragraph one of subdivision (b) of section twenty-five-b of the labor law, shall be entitled to a credit against the tax imposed by this article. The amount of the credit shall be: fifteen percent of the qualified wages paid after January first, two thousand fifteen to a qualified full-time employee who is employed for not less than six months and who works at least thirty hours per week; and shall be ten percent of the qualified wages paid after January first, two thousand fifteen to a qualified part-time employee who is employed for not less than six months and works at least eight hours per week. The credit allowed pursuant to this subsection shall not exceed, during any taxable year, five thousand dollars for any qualified full time employee and two thousand five hundred dollars for any qualified part time employee. "Qualified wages" means wages paid or incurred by the qualified employer during the taxable year to a qualified employee which are attributable, with respect to such employee, to services rendered by the qualified employee.

(2) If the amount of credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, any amount of credit not deductible in such taxable year may be carried over to the following three years, and may be deducted for the qualified employer's tax for such years.

(3) The taxpayer shall attach to its tax return its final certificate of eligibility issued by the commissioner of labor pursuant to section twenty-five-b of the labor law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the final certificate of eligibility. Notwithstanding any provision of this chapter to the contrary, the commissioner and the commissioner's designees may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer.

(4) A qualified employer may not claim the workers with disabilities tax credit if it claims any of the other credits for employment of persons with disabilities under either subsection (o) of section six hundred six, subdivision twelve of section two hundred ten-B, or subdivision (j) of section fifteen hundred eleven of this chapter.

(aaa) Minimum wage reimbursement credit. (1) A taxpayer shall be allowed a credit, to be computed as provided in section thirty-eight of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

(ccc) Article twenty-four employee credit. A covered employee of an electing employer shall be entitled to a credit against the tax imposed by this article as provided in this subsection. For purposes of this subsection the terms "covered employee" and "electing employer" shall have the same meanings as under section eight hundred fifty of this chapter. (1) For two thousand nineteen, the credit shall be equal to the product of (i) the covered employee's wages and compensation in excess of forty thousand dollars received during the tax year from the electing employer that are subject to tax under this article and (ii) one and one-half percent and (iii) the result of one minus a fraction, the numerator of which shall be the tax imposed on the covered employee as determined pursuant to section six hundred one of this article before the application of any credits for the applicable tax year and the denominator of which shall be the covered employee's taxable income as determined pursuant to this article for the applicable tax year. (2) For

two thousand twenty, the credit shall be equal to the product of (i) the covered employee's wages and compensation in excess of forty thousand dollars received during the tax year from the electing employer that are subject to tax under this article and (ii) three percent and (iii) the result of one minus a fraction, the numerator of which shall be the tax imposed on the covered employee as determined pursuant to section six hundred one of this article before the application of any credits for the applicable tax year and the denominator of which shall be the covered employee's taxable income as determined pursuant to this article for the applicable tax year. (3) For two thousand twenty-one and thereafter, the credit shall be equal to the product of (i) the covered employee's wages and compensation in excess of forty thousand dollars received during the tax year from the electing employer that are subject to tax under this article and (ii) five percent and (iii) the result of one minus a fraction, the numerator of which shall be the tax imposed on the covered employee as determined pursuant to section six hundred one of this article before the application of any credits for the applicable tax year and the denominator of which shall be the covered employee's taxable income as determined pursuant to this article for the applicable tax year. If the amount of the credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess allowed for a taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(ddd) Employee training incentive program tax credit. (1) For taxable years beginning before January first, two thousand twenty-nine, a taxpayer that has been approved by the commissioner of economic development to participate in the employee training incentive program and has been issued a certificate of tax credit pursuant to section four hundred forty-three of the economic development law shall be allowed to claim a credit against the tax imposed by this article. The credit shall equal fifty percent of a taxpayer's eligible training costs, up to a credit of ten thousand dollars per employee completing eligible training pursuant to paragraph (a) of subdivision three of section four hundred forty-one of the economic development law. The credit shall equal fifty percent of the stipend paid to an intern, up to a credit of three thousand dollars per intern completing eligible training pursuant

to paragraph (b) of subdivision three of section four hundred forty-one of the economic development law. In no event shall a taxpayer be allowed a credit greater than the amount listed on the certificate of tax credit issued by the commissioner of economic development. In the case of a taxpayer who is a partner in a partnership, member of a limited liability company or shareholder in an S corporation, the taxpayer shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation. The credit will be allowed in the taxable year in which the eligible training is completed.

(2) If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for the taxable year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, no interest will be paid thereon.

(eee) School tax relief (STAR) credit. (1) Definitions. For purposes of this subsection:

(A) "Qualified taxpayer" means a resident individual of the state, who maintained their primary residence in this state on July first of the taxable year, and who was an owner of that property on that date, provided however:

(i) A taxpayer whose primary residence received a STAR exemption for the associated fiscal year shall not be considered a qualified taxpayer for purposes of this subsection.

(ii) An individual may be considered a qualified taxpayer with respect to no more than one primary residence during any given taxable year.

(B) (i) "Affiliated income" shall mean the combined income of all of the owners of the parcel who resided primarily thereon as of July first of the taxable year, and of any owners' spouses residing primarily thereon as of such date; provided that the income to be so combined shall be the "adjusted gross income" for the taxable year as reported for federal income tax purposes, or that would be reported as adjusted gross income if a federal income tax return were required to be filed, reduced by distributions, to the extent included in federal adjusted gross income, received from an individual retirement account and an individual retirement annuity.

(ii) For taxable years beginning on and after January first, two thousand nineteen, where an income-eligibility determination is wholly

or partly based upon the income of one or more individuals who did not file a return pursuant to section six hundred fifty-one of this article for the applicable income tax year, then in order to be eligible for the credit authorized by this subsection, each such individual must file a statement with the department showing the source or sources of such individual's income for that income tax year, and the amount or amounts thereof, that would have been reported on such a return if one had been filed. Such statement shall be filed at such time, and in such form and manner, as may be prescribed by the department, and shall be subject to the provisions of section six hundred ninety-seven of this article to the same extent that a return would be. The department shall make such forms and instructions available for the filing of such statements. The local assessor shall upon the request of a taxpayer assist such taxpayer in the filing of the statement with the department.

(iii) Notwithstanding the foregoing provisions of this subparagraph, where property is owned solely by a person or persons who received the credit for three consecutive years without having filed returns for the applicable income tax years, but who demonstrated their eligibility for the credit to the commissioner's satisfaction by filing statements pursuant to clause (ii) of this subparagraph, such person or persons shall be presumed to satisfy the applicable income-eligibility requirements each year thereafter and shall not be required to continue to file such statements in the absence of a specific request therefor from the commissioner. Nothing contained herein shall be construed to prevent the commissioner from denying a credit pursuant to this subsection when the commissioner determines that a property owner has a source of income that renders that owner temporarily or permanently ineligible for that credit.

(C) "Associated fiscal year" means the school district fiscal year that began on July first of the taxable year or, in the case of a city school district that is subject to article fifty-two of the education law, the city fiscal year that began on July first of the taxable year.

(D) "Owner" means:

- (i) a person who owns a parcel in fee simple absolute or as a tenant in common, a joint tenant or a tenant by the entirety,
- (ii) an owner of a present interest in a parcel under a life estate,
- (iii) a vendee in possession under an installment contract of sale,

(iv) a beneficial owner under a trust,

(v) a tenant-stockholder of a cooperative apartment corporation who resides in a portion of real property owned by such cooperative apartment corporation, to the extent represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation,

(vi) a resident of a farm dwelling that is owned either by a corporation of which the resident is a shareholder, a partnership of which the resident is a partner, or by a limited liability company of which the resident is an owner, or

(vii) a resident of a dwelling, other than a farm dwelling, that is owned by a limited partnership of which the resident is a partner, provided that the limited partnership that holds title to the property does not engage in any commercial activity, that the limited partnership was lawfully created to hold title solely for estate planning and asset protection purposes, and that the partner or partners who primarily reside thereon personally pay all of the real property taxes and other costs associated with the property's ownership.

(E) "Qualifying taxes" means the school district taxes that were or are to be levied upon the taxpayer's primary residence for the associated fiscal year; or, in the case of a city school district that is subject to article fifty-two of the education law, the combined city and school district taxes that were or are to be levied upon the taxpayer's primary residence for the associated fiscal year. Provided, however, that in the case of a cooperative apartment, "qualifying taxes" means the school district taxes that would have been levied upon the tenant-stockholder's primary residence if it were separately assessed, as determined by the commissioner based on the statement provided by the assessor pursuant to subparagraph (ii) of paragraph (k) of subdivision two of section four hundred twenty-five of the real property tax law, or in the case of a cooperative apartment corporation that is described in subparagraph (iv) of paragraph (k) of subdivision two of section four hundred twenty-five of the real property tax law, one third of such amount. In no case shall the term "qualifying taxes" be construed to include penalties or interest.

(F) "STAR exemption" means the school tax relief (STAR) exemption

authorized by section four hundred twenty-five of the real property tax law.

(G) "STAR tax savings" means the tax savings attributable to the STAR exemption within a portion of a school district, as determined by the commissioner pursuant to subdivision two of section thirteen hundred six-a of the real property tax law for purposes of the credit authorized by this subsection.

(2) Allowance of credit. A qualified taxpayer shall be allowed a credit as provided in paragraph three or four of this subsection, whichever is applicable, against the taxes imposed by this article reduced by the credits permitted by this article, provided that the requirements set forth in the applicable subsection are satisfied. If the credit exceeds the tax as so reduced for such year under this article, the excess shall be treated as an overpayment, to be credited or refunded, without interest. If a qualified taxpayer is not required to file a return pursuant to section six hundred fifty-one of this article, a qualified taxpayer may nevertheless receive the full amount of the credit to be credited or repaid as an overpayment, without interest thereon.

(3) Determination of basic STAR credit. (A) Beginning with taxable years after two thousand fifteen, a basic STAR credit shall be available to a qualified taxpayer if the affiliated income of the parcel that serves as the taxpayer's primary residence is less than or equal to five hundred thousand dollars for the applicable income tax year specified by paragraph (b-1) of subdivision three of section four hundred twenty-five of the real property tax law. The income limit established for the basic STAR exemption by paragraph (b-1) of subdivision three of section four hundred twenty-five of the real property tax law shall not be taken into account when determining eligibility for the basic STAR credit.

(B) Subject to the provisions of subparagraph (C) of this paragraph, such basic STAR credit shall be the lesser of:

(i) the basic STAR tax savings for the school district portion in which the taxpayer's primary residence is located, or

(ii) the taxpayer's qualifying taxes.

(C) If the qualifying taxes paid by the taxpayer constituted only a portion of the total school district taxes that were levied upon the taxpayer's primary residence for the associated fiscal year or, in the

case of a city school district that is subject to article fifty-two of the education law, if the qualifying taxes paid by the taxpayer constituted only a portion of the total combined city and school district taxes that were levied upon the taxpayer's primary residence for the associated fiscal year, the credit allowable to such taxpayer shall be equal to the amount determined pursuant to subparagraph (B) of this paragraph multiplied by the percentage that such portion represents.

(4) Determination of enhanced STAR credit. (A) Beginning with taxable years after two thousand twenty-five, an enhanced STAR credit shall be available to a qualified taxpayer where both of the following conditions are satisfied:

(i) At least one of the owners of the parcel that serves as the taxpayer's primary residence is at least sixty-five years of age as of December thirty-first of the taxable year. In the case of property owned by a married couple, if only one of the spouses is sixty-five years of age or over, the credit, once allowed, shall not be disallowed because of the death of the older spouse so long as the surviving spouse is at least sixty-two years of age as of December thirty-first of the taxable year.

(ii) The affiliated income of the parcel that serves as the taxpayer's primary residence is less than or equal to the income standard for the taxable year established by the commissioner for the corresponding "income tax year" pursuant to clause (C) of subparagraph (i) of paragraph (b) of subdivision four of section four hundred twenty-five of the real property tax law for purposes of the enhanced STAR exemption.

(B) Subject to the provisions of subparagraph (C) of this paragraph, such credit shall be the lesser of:

(i) the enhanced STAR tax savings for the school district portion in which the taxpayer's primary residence is located, or

(ii) the taxpayer's qualifying taxes.

(C) If the qualifying taxes paid by the taxpayer constituted only a portion of the total school district taxes that were levied upon the taxpayer's primary residence for the associated fiscal year or, in the case of a city school district that is subject to article fifty-two of the education law, if the qualifying taxes paid by the taxpayer constituted only a portion of the total combined city and school

district taxes that were levied upon the taxpayer's primary residence for the associated fiscal year, the credit allowable to such taxpayer shall be equal to the amount determined pursuant to subparagraph (B) of this paragraph multiplied by the percentage that such portion represents.

(5) Disqualification. A taxpayer shall not qualify for the credit authorized by this subsection if the parcel that serves as the taxpayer's primary residence received the STAR exemption on the assessment roll upon which school district taxes for the associated fiscal year were levied. Provided, however, that the taxpayer may remove this disqualification by switching to the credit in the manner provided by subdivision seventeen of section four hundred twenty-five of the real property tax law. Alternatively, the taxpayer may remove this disqualification by renouncing the exemption and making any required payments in the manner provided by section four hundred ninety-six of the real property tax law. Any such switch to the credit or renunciation shall be irrevocable.

(6) Special cases.

(A) A married couple may not receive a credit pursuant to this subsection on more than one residence during any given taxable year, unless living apart due to legal separation. Nor may a married couple receive a credit pursuant to this subsection on one residence while receiving an exemption pursuant to section four hundred twenty-five of the real property tax law on another residence, unless living apart due to legal separation.

(B) (i) In the case of property consisting of a mobile home that is described in paragraph (1) of subdivision two of section four hundred twenty-five of the real property tax law, the amount of the credit allowable with respect to such mobile home shall be equal to the basic STAR tax savings for the school district portion, or the enhanced STAR tax savings for the school district portion, whichever is applicable, that would be applied to a separately assessed parcel in the school district portion with a taxable assessed value equal to twenty thousand dollars multiplied by the latest state equalization rate or special equalization rate for the assessing unit in which the mobile home is located. Provided, however, that if the commissioner is in possession of information, including but not limited to assessment records, that

demonstrates to the commissioner's satisfaction that the taxpayer's mobile home is worth more than twenty thousand dollars, or if the taxpayer provides the commissioner with such information, the taxpayer's credit shall be increased accordingly, but in no case shall the credit exceed the basic STAR tax savings or enhanced STAR tax savings, whichever is applicable, for the school district portion.

(ii) The commissioner may implement an electronic system for the reporting of information by owners and operators of manufactured home parks, as defined by section two hundred thirty-three of the real property law. Upon the implementation of such a system, each such owner and operator shall file electronic statements with the commissioner according to a schedule to be determined by the commissioner. Such statement shall require reporting of names of all persons owning an interest in the park, the services provided by the park owner to the tenants, the name of the agent designated pursuant to subdivision 1 of section two hundred thirty-three of the real property law, the names and addresses of all tenants of the park, whether the tenant leases or owns the home, the rent set for each lot in the park, and such additional information as the commissioner may deem necessary for the proper administration of the STAR exemption established pursuant to section four hundred twenty-five of the real property tax law and the STAR credit and any other property tax-based credit established pursuant to this section. In the case of the first registration statement filed in a calendar year, such statement shall also include a copy of all current manufactured home park rules and regulations. In the case that the manufactured home park rules and regulations are modified after the filing of the first registration statement in a calendar year, the next subsequent registration statement shall also include a copy of such rules and regulations. The commissioner shall provide the commissioner of housing and community renewal with the information contained in each report no later than thirty days after the receipt thereof.

(iii) Beginning with the two thousand twenty-two taxable year, to receive the credit authorized by this subsection, an owner of a mobile home described by clause (i) of this subparagraph shall register for such credit in the manner prescribed by the commissioner.

(C) In the case of a primary residence that is located in two or more school districts, the applicable basic or enhanced STAR tax savings for

the school district portion shall be determined as follows:

(i) determine the sum of the total school district taxes that were levied upon the taxpayer's primary residence for the associated fiscal year by each of the school districts in which the residence is located;

(ii) for each such school district, divide the total school district taxes that were levied upon the taxpayer's primary residence by that school district for the associated fiscal year by the sum determined in clause (i) of this subparagraph. Express the result as a percentage with two decimal places;

(iii) for each such school district, multiply the percentage determined in clause (ii) of this subparagraph by the basic or enhanced STAR tax savings for the school district portion, whichever is applicable; and

(iv) add the products determined in clause (iii) of this subparagraph.

(7) Disclosure of incomes and other information. (A) Where the commissioner has denied a taxpayer's claim for the credit authorized by this subsection in whole or in part on the grounds that the affiliated income of the parcel in question exceeds the applicable limit, the commissioner shall have the authority to reveal to that taxpayer the names and incomes of the other taxpayers whose incomes were included in the computation of such affiliated income.

(B) Notwithstanding any provision of law to the contrary, the names and addresses of individuals who have applied for or are receiving the credit authorized by this subsection may be disclosed to assessors, county directors of real property tax services, municipal tax collecting officers and enforcing officers within New York state. In addition, such information may be exchanged with assessors and tax officials from jurisdictions outside New York state if the laws of the other jurisdiction allow it to provide similar information to this state. Such information shall be considered confidential and shall not be subject to further disclosure pursuant to the freedom of information law or otherwise.

(8) Proof of claim. The commissioner may require a qualified taxpayer to furnish the following information in support of his or her claim for credit under this subsection: affiliated income, the total school district taxes levied on the property for the associated fiscal year or, in the case of a city school district that is subject to article

fifty-two of the education law, the total combined city and school district taxes levied on the property for the associated fiscal year, the qualifying taxes paid by the taxpayer, the names and taxpayer identification numbers of all owners of the property and spouses who primarily reside on the property, the parcel identification number and all other information that may be required by the commissioner to determine the credit.

(9) Returns. Whether or not the taxpayer is required to file a return pursuant to section six hundred fifty-one of this article, the process for requesting advance payment of such credit shall be as provided by paragraph ten of this subsection.

(10) Advance payments. (A) The commissioner shall establish a mechanism by which a qualified taxpayer may apply for an advance payment of the credit authorized by this section, provided that:

(i) If the taxpayer acquired a new primary residence between January first and July first of the taxable year, inclusive, any such application must be submitted to the commissioner by the first day of July of the taxable year, or such later date as may be prescribed by the commissioner in order for the taxpayer's payment to be subject to the processing schedule provided by subparagraph (B) of this paragraph, and

(ii) A qualified taxpayer who fails to apply for an advance payment of such credit by such date may apply for and receive such credit in the manner prescribed by the commissioner, provided that such application shall be made within three years from the time that a return for the taxable year would have had to be filed pursuant to section six hundred fifty-one of this article. If approved, such payment shall be issued as soon as is practicable after the submission of the application but shall not be subject to the processing schedule prescribed by subparagraph (B) of this paragraph, and

(iii) A qualified taxpayer who has applied for an advance payment of such credit in a taxable year may continue to receive such advance payments in future taxable years without reapplying as long as he or she remains eligible therefor.

(B) On or before the date specified below, or as soon thereafter as practicable, the commissioner shall determine the eligibility of taxpayers for this credit utilizing the information available to him or her as obtained from the applications submitted on or before July first

of that year, or such later date as may have been prescribed by the commissioner for that purpose, and from such other sources as the commissioner deems reliable and appropriate. For those taxpayers whom the commissioner has determined eligible for this credit, the commissioner shall advance a payment in the amount specified in paragraph three, four or six of this subsection, whichever is applicable. Such payment shall be issued by the date specified below, or as soon thereafter as is practicable; provided that if such payment is issued after such date, it shall be subject to interest at the rate prescribed by subparagraph (A) of paragraph two of subsection (j) of section six hundred ninety-seven of this article. Nothing contained herein shall be deemed to preclude the commissioner from issuing payments after such date to qualified taxpayers whose applications were made after July first of that year, or such later date as may have been prescribed by the commissioner for such purpose.

(i) The applicable dates for this purpose are as follows:

(I) If the school district tax roll is filed with the commissioner on or before July first, the determination of eligibility shall be made by July fifteenth, or as soon thereafter as is practicable, and the advance payment shall be issued by July thirtieth, or as soon thereafter as is practicable.

(II) If the school district tax roll is filed with the commissioner after July first and on or before September first, the determination of eligibility shall be made by September fifteenth, or as soon thereafter as is practicable, and the advance payment shall be issued by September thirtieth, or as soon thereafter as is practicable.

(III) If the school district tax roll is filed with the commissioner after September first, the determination of eligibility shall be made by the fifteenth day after such filing, or as soon thereafter as is practicable, and the advance payment shall be issued by the thirtieth day after such filing, or as soon thereafter as is practicable.

(ii) Notwithstanding the foregoing provisions of this subparagraph, in the case of taxpayers whose primary residence is a cooperative apartment or a mobile home that is subject to the provisions of subparagraph (A) or (B) of paragraph six of this subsection, the payment shall be issued by the sixtieth day following receipt of all of the data needed to properly calculate the credit, or as soon thereafter as is practicable.

(C) A taxpayer who has failed to receive an advance payment that he or she believes was due to him or her, or who has received an advance payment that he or she believes is less than the amount that was due to him or her, may request payment of the claimed deficiency in a manner prescribed by the commissioner.

(D) An advance payment of credit provided pursuant to this subsection that exceeds the taxpayer's qualifying taxes for that taxable year shall be added back as tax on the income tax return for that taxable year.

(E) If the commissioner determines after issuing an advance payment that it was issued in an excessive amount or to an ineligible or incorrect party, the commissioner shall be empowered to utilize any of the procedures for collection, levy and lien of personal income tax set forth in this article, any other relevant procedures referenced within the provisions of this article, and any other law as may be applicable, to recoup the improperly issued amount; provided that in the event such party was determined to be ineligible on the basis that his or her primary residence received the STAR exemption in the associated fiscal year, the improperly issued credit amount shall be deemed a clerical error and shall be paid upon notice and demand without the issuance of a notice of deficiency and shall be assessed, collected and paid in the same manner as taxes.

(11) Administration. The provisions of this article, including the provisions of sections six hundred fifty-three, six hundred fifty-eight, and six hundred fifty-nine of this article and the provisions of part six of this article relating to procedure and administration, including the judicial review of the decisions of the commissioner, except so much of section six hundred eighty-seven of this article that permits a claim for credit or refund to be filed after the period provided for in paragraph nine of this subsection and except sections six hundred fifty-seven, six hundred eighty-eight and six hundred ninety-six of this article, shall apply to the provisions of this subsection in the same manner and with the same force and effect as if the language of those provisions had been incorporated in full into this subsection and had expressly referred to the credit allowed or returns filed under this subsection, except to the extent that any such provision is either inconsistent with a provision of this subsection or is not relevant to this subsection. As used in such sections and such part, the term

"taxpayer" shall include a qualified taxpayer under this subsection and, notwithstanding the provisions of subsection (e) of section six hundred ninety-seven of this article, where a qualified taxpayer has protested the denial of a claim for credit under this subsection and the time to file a petition for redetermination of a deficiency or for refund has not expired, he or she shall, subject to such conditions as may be set by the commissioner, receive such information (A) that is contained in any return filed under this article by a member of his or her household for the taxable year for which the credit is claimed, and (B) that the commissioner finds is relevant and material to the issue of whether such claim was properly denied.

(12) When the calculation of any other personal income tax credit is based in whole or in part upon the real property taxes paid by the taxpayer, the amount of real property taxes so paid shall be reduced by the credit authorized by this subsection, if applicable, in the course of performing such calculation. When the calculation of any other personal income tax credit is based in whole or in part upon an individual's state tax liability, the credit authorized by this subsection shall not be taken into account in the calculation of such state tax liability. When the calculation of a city tax surcharge is based in whole or in part upon the net state tax of an individual, the credit authorized by this subsection shall not be taken into account in the calculation of such net state tax.

(13) (A) Nothing herein shall be construed to preclude the commissioner from making a preliminary advance payment of the credit based upon an estimate of the STAR tax savings applicable to a school district portion, where he or she finds that attempting to ascertain the actual STAR tax savings applicable to the school district portion would jeopardize the timely issuance of the payment. When making such an estimate, the commissioner shall consider the STAR tax savings applicable in the school district fiscal year preceding the associated fiscal year, the allowable levy growth factor applicable to the calculation of the tax levy limit for the associated fiscal year pursuant to paragraph a of subdivision two of section two thousand twenty-three-a of the education law, taxable assessed value where appropriate, and such other information that in his or her judgment will help make the estimate as accurate as possible.

(B) Nothing herein shall be construed to preclude the commissioner from making a preliminary advance payment of the credit without attempting to ascertain the taxpayer's qualifying taxes, where he or she finds that attempting to ascertain the taxpayer's qualifying taxes would jeopardize the timely issuance of the payment.

(C) If the commissioner determines that a taxpayer received a preliminary advance payment that is above or below the advance payment to which he or she was entitled under this subsection, the commissioner shall provide notice to such taxpayer that the next advance payment due to such taxpayer under this subsection shall be adjusted to reconcile such underpayment or overpayment.

(D) A taxpayer who received a preliminary advance payment that constitutes an overpayment shall not be required to pay interest on the amount of the overpayment.

(E) On or after April first, two thousand nineteen, a taxpayer who is found to have made a material misstatement on an application for the credit authorized by this section shall be disqualified from receiving such credit for six years. As used herein, the term "material misstatement" shall have the same meaning as set forth in paragraph (a) of subdivision thirteen of section four hundred twenty-five of the real property tax law.

(14) The process employed by the commissioner in verifying eligibility for the basic STAR credit shall be the same as for the enhanced STAR credit, except to the extent that differences are required by law.

(fff) Farm workforce retention credit. (1) A taxpayer shall be allowed a credit, to be computed as provided in section forty-two of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provision of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

(ggg) School tax reduction credit for residents of a city with a population over one million. (1) For taxable years beginning after two thousand fifteen, a school tax reduction credit shall be allowed to a resident individual of the state who is a resident of a city with a

population over one million, as provided below. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided however, that no interest will be paid thereon. For purposes of this subsection, no credit shall be granted to an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(2) The amount of the credit under this subsection shall be determined based upon the taxpayer's income as defined in subparagraph (ii) of paragraph (b) of subdivision four of section four hundred twenty-five of the real property tax law.

(3) For taxable years beginning in two thousand sixteen, the credit shall be determined as provided in this paragraph, provided that for the purposes of this paragraph, any taxpayer under subparagraphs (A) and (B) of this paragraph with income of more than two hundred fifty thousand dollars shall not receive a credit.

(A) Married individuals filing joint returns and surviving spouses. In the case of married individuals who make a single return jointly and of a surviving spouse, the credit shall be one hundred twenty-five dollars.

(B) All others. In the case of an unmarried individual, a head of a household or a married individual filing a separate return, the credit shall be sixty-two dollars and fifty cents.

(4) For taxable years beginning after two thousand sixteen, the credit shall equal the "fixed" amount provided by paragraph (4-a) of this subsection plus the "rate reduction" amount provided by paragraph (4-b) of this subsection.

(4-a) The "fixed" amount of the credit shall be determined as provided in this paragraph, provided that any taxpayer with income of more than two hundred fifty thousand dollars shall not receive such amount.

(A) Married individuals filing joint returns and surviving spouses. In the case of married individuals who make a single return jointly and of a surviving spouse, the "fixed" amount of the credit shall be one hundred twenty-five dollars.

(B) All others. In the case of an unmarried individual, a head of a

household or a married individual filing a separate return, the "fixed" amount of the credit shall be sixty-two dollars and fifty cents.

(4-b) The "rate reduction" amount of the credit shall be determined as provided in this paragraph, provided that any taxpayer with income of more than five hundred thousand dollars shall not receive such amount.

(A) For married individuals who make a single return jointly and for a surviving spouse:

If the city taxable income is:	The "rate reduction" amount is:
Not over \$21,600	0.171% of the city taxable income
Over \$21,600 but not over \$500,000	\$37 plus 0.228% of excess over \$21,600
Over \$500,000	Not applicable

(B) For a head of household:

If the city taxable income is:	The "rate reduction" amount is:
Not over \$14,400	0.171% of the city taxable income
Over \$14,400 but not over \$500,000	\$25 plus 0.228% of excess over \$14,400
Over \$500,000	Not applicable

(C) For an unmarried individual or a married individual filing a separate return:

If the city taxable income is:	The "rate reduction" amount is:
Not over \$12,000	0.171% of the city taxable income
Over \$12,000 but not over \$500,000	\$21 plus 0.228% of excess over \$12,000
Over \$500,000	Not applicable

(5) Part-year residents. If a taxpayer changes status during the taxable year from resident to nonresident, or from nonresident to resident, the school tax reduction credit authorized by this subsection shall be prorated according to the number of months in the period of residence.

(hhh) Life sciences research and development tax credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section forty-three of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be

credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(iii) Credit for contributions to certain funds. For taxable years beginning on or after January first, two thousand nineteen, an individual taxpayer shall be allowed a credit against the tax imposed under this article for an amount equal to eighty-five percent of the sum of: (1) the amount contributed by the taxpayer during the immediately preceding taxable year to any or all of the following accounts within the charitable gifts trust fund set forth in section ninety-two-gg of the state finance law: the health charitable account established by paragraph a of subdivision four of section ninety-two-gg of the state finance law, or the elementary and secondary education charitable account established by paragraph b of subdivision four of section ninety-two-gg of the state finance law; (2) the amount of qualified contributions made by the taxpayer to Health Research, Inc. in accordance with section two of the chapter of the laws of two thousand eighteen that added this subsection; and (3) the amount of qualified contributions made by the taxpayer to the State University of New York Impact Foundation and/or the Research Foundation of the City University of New York in accordance with section three of the chapter of the laws of two thousand eighteen that added this subsection.

* (jjj) Employer-provided child care credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-four of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

(3) Credit recapture. For provisions requiring recapture of credit, see section forty-four of this chapter.

* NB There are 3 subsection (jjj)'s

* (jjj) Recovery tax credit. (1) Allowance of credit. A taxpayer that is a qualified employer pursuant to section 32.38 of the mental hygiene law that has received a certificate of tax credit from the commissioner

of the office of alcoholism and substance abuse services shall be allowed a credit against the tax imposed by this article equal to the amount shown on such certificate of tax credit. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in an S corporation that has been certified by the commissioner of the office of alcoholism and substance abuse services as a qualified employer pursuant to section 32.38 of the mental hygiene law shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation.

(2) Overpayment. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for the taxable year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, no interest will be paid thereon.

(3) Tax return requirement. The taxpayer shall be required to attach to its tax return, in the form prescribed by the commissioner, proof of receipt of its certificate of tax credit issued by the commissioner of the office of alcoholism and substance abuse services pursuant to section 32.38 of the mental hygiene law.

* NB There are 3 subsection (jjj)'s

* (jjj) Central business district toll credit. (1) For taxable years beginning on or after January first, two thousand twenty-one, a resident individual whose primary residence is located in the central business district established pursuant to article forty-four-C of the vehicle and traffic law and whose New York adjusted gross income for the taxable year is less than sixty thousand dollars shall be entitled to a credit as calculated pursuant to paragraph two of this subsection.

(2) The credit shall be equal to the aggregate amount of central business district tolls paid by the taxpayer during the taxable year pursuant to the central business district tolling program authorized by article forty-four-C of the vehicle and traffic law. Provided, however, that any toll that would constitute a trade or business expense under section 162 of the internal revenue code shall be excluded.

(3) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in

accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* NB There are 3 subsection (jjj)'s

(kkk) Credit for pass-through entity tax. (1) A taxpayer partner or member of an electing partnership and a taxpayer shareholder of an electing S corporation subject to tax under article twenty-four-A of this chapter shall be entitled to a credit against the tax imposed by this article as provided in this subsection. For purposes of this subsection, the terms "electing partnership," "electing S corporation," "pass-through entity tax," and "direct share of pass-through entity tax" shall have the same meanings as used in article twenty-four-A of this chapter.

(2) The credit shall be equal to the partner's, member's or shareholder's direct share of the pass-through entity tax.

(3) If a taxpayer is a partner, member or shareholder in multiple electing partnerships and/or electing S corporations subject to tax pursuant to article twenty-four-A of this chapter, the taxpayer's credit shall be the sum of such credits calculated pursuant to paragraph two of this subsection with regard to each entity in which the taxpayer has a direct ownership interest.

(4) If the amount of the credit allowable pursuant to this subsection for any taxable year exceeds the tax due for such year pursuant to this article, the excess shall be treated as an overpayment, to be credited or refunded, without interest.

(5) Limitation on credit. No credit shall be allowed to a taxpayer under this subsection unless the electing partnership or electing S corporation provided sufficient information to identify the taxpayer on its pass-through entity tax return as required under paragraph two of subsection (c) of section eight hundred sixty-five of this article for an electing partnership or paragraph two of subsection (d) of section eight hundred sixty-five of this article for an electing S corporation. The credit allowed to a taxpayer under this subsection shall not exceed the direct share of pass-through entity tax reported by such electing partnership or electing S corporation attributable to such taxpayer on the entity's return filed pursuant to section eight hundred sixty-five of this article.

(lll) Restaurant return-to-work tax credit. (1) Allowance of credit. A

taxpayer shall be allowed a credit, to be computed as provided in section forty-six of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* (mmm) New York city musical and theatrical production tax credit.

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

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* NB Repealed January 1, 2028

* (nnn) Farm employer overtime credit. (1) A taxpayer shall be allowed a credit, to be computed as provided in section forty-two-a of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provision of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* NB There are 5 sb§ (nnn)'s

* (nnn) COVID-19 capital costs tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-seven of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be

credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* NB There are 5 sb§ (nnn)'s

* (nnn) Grade no. 6 heating oil conversion tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-seven of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* NB There are 5 sb§ (nnn)'s

* (nnn) Additional restaurant return-to-work tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-six-a of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* NB There are 5 sb§ (nnn)'s

* (nnn) Empire state digital gaming media production credit. (1) Allowance of credit. A taxpayer who is eligible pursuant to section forty-five of this chapter shall be allowed a credit to be computed as provided in such section forty-five against the tax imposed by this article. Under no circumstances may a single taxpayer receive more than one million five hundred thousand dollars in tax credits per year.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

* NB There are 5 sb§ (nnn)'s

(ooo) Child care creation and expansion tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-eight of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* (ppp) Newspaper and broadcast media jobs tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-nine of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* NB There are 2 sb (ppp)'s

* (ppp) Commercial security tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-nine of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

* NB There are 2 sb (ppp)'s

(qqq) Inflation refund credit. (1) A taxpayer who meets the eligibility standards in paragraph two of this subsection shall be allowed a credit against the taxes imposed by this article in the amount specified in paragraph three of this subsection for tax year two

thousand twenty-five.

(2) To be eligible for the credit, the taxpayer (or taxpayers filing joint returns)(a) must have been a full-year resident in the state of New York in tax year two thousand twenty-three, (b) (i) must have had New York adjusted gross income of three hundred thousand dollars or less in tax year two thousand twenty-three if they filed a New York state resident income tax return as married taxpayers filing jointly or a qualified surviving spouse, or (ii) must have had New York adjusted gross income of one hundred fifty thousand dollars or less in tax year two thousand twenty-three if they filed a New York state resident income tax return as a single taxpayer, married taxpayer filing a separate return, or head of household, and (c) must not have been claimed as a dependent by another taxpayer in tax year two thousand twenty-three.

(3) Amount of credit. (a) For taxpayers who meet the eligibility standards in paragraph two who filed a New York state resident income tax return as married taxpayers filing jointly or a qualified surviving spouse, (i) with New York adjusted gross income of greater than one hundred fifty thousand dollars but no greater than three hundred thousand dollars in tax year two thousand twenty-three, the credit amount shall be three hundred dollars, or (ii) with New York adjusted gross income of no greater than one hundred fifty thousand dollars in tax year two thousand twenty-three, the credit amount shall be four hundred dollars, and (b) for taxpayers who meet the eligibility standards in paragraph two who filed a New York state resident income tax return as a single taxpayer, married taxpayer filing a separate return, or head of household, (i) with New York adjusted gross income of greater than seventy-five thousand dollars but no greater than one hundred fifty thousand dollars in tax year two thousand twenty-three, the credit amount shall be one hundred fifty dollars, or (ii) with New York adjusted gross income of no greater than seventy-five thousand dollars in tax year two thousand twenty-three, the credit amount shall be two hundred dollars.

(4) The amount of the credit shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. The commissioner shall determine the taxpayer's eligibility for this credit utilizing the information

available to the commissioner on the taxpayer's personal income tax return filed for tax year two thousand twenty-three. For those taxpayers whom the commissioner has determined eligible for this credit, the commissioner shall advance a payment in the amount specified in paragraph three of this subsection. A taxpayer who failed to receive an advance payment that they believe was due, or who received an advance payment that they believe is less than the amount that was due, may request payment of the claimed deficiency in a manner prescribed by the commissioner.

(rrr) Semiconductor research and development tax credit. (1) Allowance of credit. A taxpayer that has been approved by the commissioner of economic development to participate in the semiconductor research and development tax credit program and has been issued a certificate of tax credit pursuant to section three hundred fifty-nine-e of the economic development law shall be allowed to claim a credit against the tax imposed by this article. The credit shall equal up to fifteen percent of the cost or other basis for federal income tax purposes of the qualified investment and shall be allowable in each taxable year for which the commissioner of economic development has issued a certificate of tax credit, for up to ten consecutive taxable years. In no event shall a taxpayer be allowed a credit greater than the amount listed on the certificate of tax credit issued by the commissioner of economic development. In the case of a taxpayer who is a partner in a partnership, member of a limited liability company or shareholder in an S corporation, the taxpayer shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation. No cost or expense paid or incurred by the taxpayer that is the basis for this credit shall be the basis for any other tax credit provided by this chapter.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for the taxable year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, no interest will be paid thereon.

(3) Reporting. The taxpayer shall attach to its tax return its certificate of tax credit issued by the commissioner of economic

development pursuant to section three hundred fifty-nine-e of the economic development law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the certificate of tax credit, or in the case of a taxpayer who is a partner in a partnership, a member of a limited liability company, or shareholder in an S corporation, its pro rata share of the amount of credit listed on the certificate of tax credit.

(4) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of economic development under article seventeen-A of the economic development law is revoked by such department because the taxpayer does not meet the eligibility requirement set forth in subdivision six of section three hundred fifty-nine-c of economic development law, the amount of credit described in this subdivision and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(sss) Semiconductor workforce training program tax credit. (1) Allowance of tax credit. A taxpayer that has been approved by the commissioner of economic development to participate in the semiconductor workforce training program and has been issued a certificate of tax credit pursuant to section five hundred three of the economic development law shall be allowed to claim a credit against the tax imposed by this article. The credit shall equal seventy-five percent of wages, salaries or other compensation, training costs, and wrap around services, up to a credit of twenty-five thousand dollars per employee receiving eligible training, up to one million dollars per eligible non-semiconductor manufacturing business and up to five million dollars per eligible semiconductor manufacturing business pursuant to subdivision three of section five hundred three of the economic development law. In no event shall a taxpayer be allowed a credit greater than the amount listed on the certificate of tax credit issued by the commissioner of economic development. In the case of a taxpayer who is a partner in a partnership, member of a limited liability company or shareholder in an S corporation, the taxpayer shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation. The credit shall be allowed in the taxable year in which the eligible training is completed. No cost or

expense paid or incurred by the taxpayer that is the basis for this credit shall be the basis for any other tax credit provided by this chapter.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for the taxable year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, no interest will be paid thereon.

(3) Reporting. The taxpayer shall attach to its tax return its certificate of tax credit issued by the commissioner of economic development pursuant to section five hundred three of the economic development law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the certificate of tax credit, or in the case of a taxpayer who is a partner in a partnership, a member of a limited liability company, or shareholder in an S corporation, its pro rata share of the amount of credit listed on the certificate of tax credit.

(4) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of economic development under article twenty-eight of the economic development law is revoked by such department because the taxpayer does not meet the eligibility requirement set forth in subdivision three of section five hundred three of the economic development law, the amount of credit described in this subsection and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(ttt) Organ donation credit. (1) For taxable years beginning on or after January first, two thousand twenty-five, a full-year resident taxpayer who, while living, donates one or more of their human organs to another human being for human organ transplantation will be allowed a credit against the taxes imposed by this article in the amount specified in paragraph two of this subsection. For purposes of this paragraph, "human organ" means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow.

(2) A taxpayer may claim the credit allowed under this subsection only once and in the taxable year in which the human organ transplantation

occurs. Such credit may be claimed, in an amount not to exceed ten thousand dollars, for only the following unreimbursed expenses that are incurred by the taxpayer and related to the taxpayer's organ donation:

- (A) travel expenses;
- (B) lodging expenses; and
- (C) lost wages.

Provided, however, that this credit shall not apply to any organ donation for which the taxpayer has received benefits under section forty-three hundred seventy-one of the public health law.

(3) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(uuu) Protecting our wallets energy rebate (POWER) credit. (1) A taxpayer who meets the eligibility standards in paragraph two of this subsection shall be allowed a credit against the taxes imposed by this article in the amount specified in paragraph three of this subsection for tax year two thousand twenty-six.

(2) To be eligible for the credit, the taxpayer (or taxpayers filing joint returns) (A) must have been a full-year resident of the state of New York in tax year two thousand twenty-four, (B) must have timely filed a return for tax year two thousand twenty-four pursuant to section six hundred fifty-one of this article, determined with regard to extensions pursuant to section six hundred fifty-seven of this article, (C) (i) must have had New York adjusted gross income of three hundred thousand dollars or less in tax year two thousand twenty-four if they filed a New York state resident income tax return as married taxpayers filing jointly or a qualified surviving spouse, or (ii) must have had New York adjusted gross income of one hundred fifty thousand dollars or less in tax year two thousand twenty-four if they filed a New York state resident income tax return as a single taxpayer, married taxpayer filing a separate return, or head of household, and (D) must not have been claimed as a dependent by another taxpayer in tax year two thousand twenty-four.

(3) Amount of credit. (A) For taxpayers who meet the eligibility standards in paragraph two who filed a New York state resident income

tax return as married taxpayers filing jointly or a qualified surviving spouse, (i) with a New York adjusted gross income of greater than one hundred fifty thousand dollars but no greater than three hundred thousand dollars in tax year two thousand twenty-four, the credit amount shall be one hundred fifty dollars, or (ii) with a New York adjusted gross income of no greater than one hundred fifty thousand dollars in tax year two thousand twenty-four, the credit amount shall be two hundred dollars, and (B) for taxpayers who meet the eligibility standards in paragraph two who filed a New York state resident income tax return as a single taxpayer, married taxpayer filing a separate return, or head of household with a New York adjusted gross income of no greater than one hundred fifty thousand dollars in tax year two thousand twenty-four, the credit amount shall be one hundred dollars.

(4) The amount of the credit shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. The commissioner shall determine the taxpayer's eligibility for this credit utilizing information available to the commissioner on the taxpayer's personal income tax return filed for tax year two thousand twenty-four. For those taxpayers whom the commissioner has determined eligible for this credit, the commissioner shall advance a payment in the amount specified in paragraph three of this subsection. A taxpayer who failed to receive an advance payment that they believe was due, or who received an advance payment that they believe is less than the amount that was due, may request payment of the claimed deficiency in a manner prescribed by the commissioner.

(vvv) Empire state apprenticeship tax credit. (1)(A) A taxpayer that has been certified by the commissioner of labor as a certified employer pursuant to section twenty-five-c of the labor law shall be allowed a credit against the tax imposed by this article equal to the amount specified under subdivision (c) of section twenty-five-c of the labor law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the final certificate of tax credit.

(B) A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in an S corporation that has been certified by the commissioner of labor as a certified employer pursuant to section twenty-five-c of the labor law shall be allowed its pro rata

share of the credit earned by the partnership, limited liability company or S corporation.

(2) If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article. Provided, however, no interest will be paid thereon.

(yyy) Order of credits. Credits allowable under this article which cannot be carried over and which are not refundable shall be deducted first. Credits allowable under this article which can be carried over, and carryovers of such credits, shall be deducted next, and among such credits, those whose carryover is of limited duration shall be deducted before those whose carryover is of unlimited duration. Credits allowable under this article which are refundable shall be deducted last.

(zzz) Cross references.--For credit in respect of:

- (1) taxes withheld on wages, see section six hundred seventy-three,
- (2) taxes imposed on a resident by other states, see section six hundred twenty,
- (3) taxes overpaid for a prior taxable year, see section six hundred eighty-six,
- (4) taxes paid by a trust for a prior taxable year on income subsequently distributed, see sections six hundred twenty-one and six hundred thirty-five.

§ 607. Meaning of terms. (a) General. Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required but such meaning shall be subject to the exceptions or modifications prescribed in this article or by statute. Any reference in this article to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred eighty-six (unless a reference to the internal revenue code of nineteen hundred fifty-four is clearly intended), and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any

time or from time to time for the taxable year. Provided however, for taxable years beginning before January first, two thousand twenty-two, any amendments made to the internal revenue code of nineteen hundred eighty-six after March first, two thousand twenty shall not apply to this article.

(b) Marital or other status. An individual's marital or other status under section six hundred one, subsection (b) of section six hundred six and section six hundred fourteen shall be the same as his marital or other status for purposes of establishing the applicable federal income tax rates.

PART II-RESIDENTS

- Section 611. New York taxable income of a resident individual.
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- 629-a. Gift for eliminating the stigma relating to mental illness.
- 629-b. Gift for substance use disorder education and recovery.
- 630. Gift for prostate and testicular cancer research and education.
- 630-a. Gift for World Trade Center memorial foundation.
- 630-b. Gift for volunteer firefighting and volunteer emergency services fund.
- 630-c. Gift for New York state teen health education fund.
- 630-d. Gift for women's cancers education and prevention.
- 630-d*2. Gift for autism awareness and research.
- 630-e. Gift to the love your library fund.
- 630-f. Gift for organ and tissue donation outreach and research.
- 630-f*2. Gift for ALS research and education.
- 630-f*3. Gift for school-based health centers.
- 630-f*4. Gift for lupus education and prevention.
- 630-f*5. Gift for military families.
- 630-f*6. Gift for city university of New York.
- 630-g. Gift for leukemia, lymphoma and myeloma research, education and treatment.
- 630-g*2. Gift for the William B. Hoyt Memorial children and family trust fund.
- 630-g*3. Gift to the arts fund.
- 630-h. New York state campaign finance fund check-off.
- 630-i. Gifts for the state library system.
- 630-i*2. Gift for the firearm violence research fund.
- 630-i*3. Gifts for thoroughbred aftercare.
- 630-j. Gifts for standardbred aftercare.
- 630-k. Gift for Lyme and tick-borne diseases education, research and prevention.

630-l. Gift for diabetes research and education.

630-l*2. Gift for cure childhood cancer research fund.

§ 611. New York taxable income of a resident individual. (a) General. The New York taxable income of a resident individual shall be his New York adjusted gross income less his New York deduction and New York exemptions, as determined under this part.

(b) Husband and wife.

(1) If the federal taxable income of husband or wife, both of whom are residents, is determined on a separate federal return, their New York taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife, both of whom are residents, is determined on a joint federal return, their New York taxable income shall be determined jointly.

(3) If neither husband or wife, both of whom are residents, files a federal return:

(A) their tax shall be determined on their joint New York taxable income, or

(B) separate taxes may be determined on their separate New York taxable incomes if they both so elect.

(4) If either husband or wife is a resident and the other is a nonresident or part-year resident, separate taxes shall be determined on their separate New York taxable incomes unless such husband and wife determine their federal taxable income jointly and both elect to determine their joint New York taxable income as if both were residents.

§ 612. New York adjusted gross income of a resident individual. (a) General. The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by

compact or agreement to which this state is a party, to the extent not properly includible in federal adjusted gross income;

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes. (A) General. Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax.

(B) Shareholders of S corporations. In the case of a shareholder of an S corporation, with respect to taxes imposed upon or payable by the corporation, the term "income taxes" in subparagraph (A) of this paragraph shall also include the taxes imposed under article nine-A of this chapter, regardless of the measure of such tax.

(C) Pass-through entity tax deduction. (i) In the case of a partner, member or shareholder of an electing partnership or electing S corporation, the term "income taxes" in subparagraph (A) of this paragraph shall not include the taxes imposed under article twenty-four-A of this chapter to the extent such taxes are added to federal adjusted gross income under subparagraph (A) of paragraph forty-three of this subsection or the taxes imposed under article twenty-four-B of this chapter to the extent such taxes are added to the federal adjusted gross income under paragraph forty-three-a of this subsection.

(ii) In the case of a partner, member or shareholder of a partnership or S corporation, the term "income taxes" in subparagraph (A) of this paragraph shall not include pass-through entity taxes substantially similar to the tax imposed pursuant to article twenty-four-A of this chapter imposed by another state of the United States, a political subdivision of such state, or the District of Columbia upon income both derived therefrom and subject to tax under this article to the extent such taxes are added to federal adjusted gross income under subparagraph (B) of paragraph forty-three of this subsection.

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this article, to the extent deductible in determining federal

adjusted gross income.

(5) Expenses paid or incurred during the taxable year for (i) the production or collection of income which is exempt from tax under this article, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this article, to the extent that such expenses and premiums are deductible in determining federal adjusted gross income.

(6) In the case of a taxpayer who has exercised the election permitted by subsection (g) or (h) of this section, the amount or amounts required by said subsections to be added to federal adjusted gross income.

(7) In the case of a taxpayer who is a shareholder of a corporation organized under article fifteen or authorized to do business in this state under article fifteen-a of the business corporation law, for the taxpayer's taxable years beginning before nineteen hundred eighty-eight, the amount which is deductible by such corporation under paragraph one, two or three of subsection (a) of section four hundred four of the internal revenue code for its taxable year ending in or with such taxpayer's taxable year for contributions paid on behalf of such taxpayer minus the lesser of fifteen thousand dollars or fifteen percent of the earned income derived by such taxpayer from such corporation during such taxpayer's taxable year. In the case of a taxpayer on whose behalf contributions are paid under more than one plan to which this paragraph applies or under a plan, contributions to which on his behalf are subject to the limitations provided in section four hundred four (e) of the internal revenue code, this paragraph shall apply with respect to the aggregate of the contributions paid on his behalf under all such plans.

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

167 of the internal revenue code.

(10) The amount required to be added to federal adjusted gross income pursuant to subsection (i) of this section.

(15) In those instances where a credit for the special additional mortgage recording tax is allowed under paragraph one of subsection (f) or paragraph one of subsection (i) of section six hundred six of this article, the amount allowed as an exclusion or deduction for the special additional mortgage recording taxes imposed by subdivision one-a of section two hundred fifty-three of this chapter in determining federal adjusted gross income.

(16) Unless the credit allowed pursuant to subsection (f) of section six hundred six of this article is reflected in the computation of the gain or loss so as to result in an increase in such gain or decrease in such loss, for federal income tax purposes, from the sale or other disposition of the property with respect to which the special additional mortgage recording tax imposed pursuant to subdivision one-a of section two hundred fifty-three of this chapter was paid, the amount of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter which was paid and which is reflected in the computation of the basis of the property so as to result in a decrease in such gain or increase in such loss for federal income tax purposes from the sale or other disposition of the property with respect to which such tax was paid.

(17) The amount required to be added to federal adjusted gross income pursuant to subsection (r) of this section.

(18) In the case of a shareholder of an S corporation

(A) where the election provided for in subsection (a) of section six hundred sixty is in effect with respect to such corporation, an amount equal to his pro rata share of the corporation's reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amount of reductions for taxes determined under subsection (s) of this section.

(19) In the case of a shareholder of an S corporation

(A) where the election provided for in subsection (a) of section six hundred sixty has not been made with respect to such corporation, any

item of loss or deduction of the corporation included in federal gross income pursuant to section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amounts of loss or deduction determined under subsection (s) of this section.

(20) S corporation distributions to the extent not included in federal gross income for the taxable year because of the application of section thirteen hundred sixty-eight, subsection (e) of section thirteen hundred seventy-one or subsection (c) of section thirteen hundred seventy-nine of the internal revenue code which represent income not previously subject to tax under this article because the election provided for in subsection (a) of section six hundred sixty had not been made. Any such distribution treated in the manner described in paragraph two of subsection (b) of section thirteen hundred sixty-eight of the internal revenue code for federal income tax purposes shall be treated as ordinary income for purposes of this article.

(21) In relation to the disposition of stock or indebtedness of a corporation which elected under subchapter s of chapter one of the internal revenue code for any taxable year of such corporation beginning, in the case of a corporation taxable under article nine-A of this chapter, after December thirty-first, nineteen hundred eighty, the amount required to be added to federal adjusted gross income pursuant to subsection (n) of this section.

(22) The amounts required to be added to federal adjusted gross income pursuant to subsection (q) of this section.

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

(24) For taxable years beginning after December thirty-first, nineteen

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

(25) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code.

* (26) The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of New York or subdivision nineteen of section twenty-five hundred seventy-five of the education law.

* NB Effective until ch 525/2011 § 3 takes effect

* (26) The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer pursuant to subdivision f of section five hundred seventeen, subdivision d of section six hundred thirteen or section twelve hundred four-a of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of New York or subdivision nineteen of section twenty-five hundred seventy-five of the education law.

* NB See ch 525/2011 § 7 for effectiveness

* (26) The amount of member or employee contributions to a retirement

system or pension fund picked up or paid by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1 or 13-125.1 of the administrative code of the city of New York.

* NB Effective upon the expiration of ch 525/2011 § 3

(26-a) The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

(27) Upon the disposition of property to which paragraph twenty-six of subsection (c) of this section applies, the amount, if any, by which the aggregate of the modifications described in such paragraph twenty-six attributable to such property exceeds the aggregate of the modifications described in paragraph twenty-five of this subsection attributable to such property.

(29) When gain from the sale or other disposition of property is included in federal gross income, the amount of reduction in the basis of such property attributable to credit for solar and wind energy systems pursuant to paragraph nine of subsection (g) of section six hundred six; but for taxable years beginning before nineteen hundred eighty-seven, if such gain affects the determination of a net capital gain for federal income tax purposes, forty percent of such amount.

(31) The amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law.

(32) The amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the administrative code of the city of New York.

(33) Real property taxes paid on qualified agricultural property and deducted in determining federal adjusted gross income, to the extent of the amount of the agricultural property tax credit allowed under subsection (n) or (i) of section six hundred six of this article.

(34) (A) Excess distributions received during the taxable year by a distributee of a family tuition account established under the New York

state college choice tuition savings program provided for under article fourteen-A of the education law, to the extent such excess distributions are deemed attributable to deductible contributions under paragraph thirty-two of subsection (c) of this section.

(B) (i) The term "excess distributions" means distributions which are not

(I) qualified withdrawals within the meaning of subdivision nine of section six hundred ninety-five-b of the education law;

(II) withdrawals made as a result of the death or disability of the designated beneficiary within the meaning of subdivision ten of section six hundred ninety-five-b of such law; or

(III) transfers described in paragraph b of subdivision six of section six hundred ninety-five-e of such law.

(ii) Excess distributions shall be deemed attributable to deductible contributions to the extent the amount of any such excess distribution, when added to all previous excess distributions from the account, exceeds the aggregate of all nondeductible contributions to the account.

(35) The amounts required to be added to federal adjusted gross income pursuant to subsection (v) of this section.

(36) In the case of a taxpayer who is not an eligible farmer as defined in subsection (n) of section six hundred six of this article, the amount of any deduction claimed pursuant to section 179 of the internal revenue code with respect to a sport utility vehicle which is not a passenger automobile as defined in paragraph 5 of subsection (d) of section 280F of the internal revenue code.

(37) Premiums paid for environmental remediation insurance, as defined in section twenty-three of this chapter, and deducted in determining federal taxable income, to the extent of the amount of the environmental remediation insurance credit allowed under such section twenty-three and subsection (ff) of section six hundred six of this article.

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

(39) The amount of any federal deduction for taxes imposed under article twenty-three of this chapter.

(39-a) The amount of any federal deduction for the excise tax on telecommunication services to the extent such taxes are used as the basis of the calculation of tax-free NY area excise tax on

telecommunication services credit allowed under subsection (yy) of section six hundred six of this article.

* (40) in the case of a beneficiary of a trust that, in any tax year after its creation including its first tax year, was not subject to tax pursuant to subparagraph (D) of paragraph three of subsection (b) of section six hundred five of this article (except for an incomplete gift non-grantor trust, as defined by paragraph forty-one of this subsection), the amount described in the first sentence of section six hundred sixty-seven of the internal revenue code for the tax year to the extent not already included in federal gross income for the tax year, except that, in computing the amount to be added under this paragraph, such beneficiary shall disregard (i) subsection (c) of section six hundred sixty-five of the internal revenue code; (ii) the income earned by such trust in any tax year in which the trust was subject to tax under this article; and (iii) the income earned by such trust in a taxable year prior to when the beneficiary first became a resident of the state or in any taxable year starting before January first, two thousand fourteen. Except as otherwise provided in this paragraph, all of the provisions of the internal revenue code that are relevant to computing the amount described in the first sentence of subsection (a) of section six hundred sixty-seven of the internal revenue code shall apply to the provisions of this paragraph with the same force and effect as if the language of those internal revenue code provisions had been incorporated in full into this paragraph, except to the extent that any such provision is either inconsistent with or not relevant to this paragraph.

* NB There are 2 par (40)'s

* (40) The amount of any federal deduction for real property taxes to the extent such taxes are used as the basis of the calculation of the real property tax credit for manufacturers allowed under subsection (xx) of section six hundred six of this article.

* NB There are 2 par (40)'s

(41) In the case of a taxpayer who transferred property to an incomplete gift non-grantor trust, the income of the trust, less any deductions of the trust, to the extent such income and deductions of such trust would be taken into account in computing the taxpayer's federal taxable income if such trust in its entirety were treated as a

grantor trust for federal tax purposes. For purposes of this paragraph, an "incomplete gift non-grantor trust" means a resident trust that meets the following conditions: (i) the trust does not qualify as a grantor trust under section six hundred seventy-one through six hundred seventy-nine of the internal revenue code, and (2) the grantor's transfer of assets to the trust is treated as an incomplete gift under section twenty-five hundred eleven of the internal revenue code, and the regulations thereunder.

(42) The amount of any gain excluded from federal gross income for the taxable year by subparagraph (A) of paragraph (1) of subsection (a) of section 1400Z-2 of the internal revenue code.

(43) Pass-through entity tax deduction addback. (A) In the case of a taxpayer who claims a credit under subsection (kkk) of section six hundred six of this article, an amount equal to the amount of such credit; and (B) in the case of a taxpayer who claims a credit under subsection (b) of section six hundred twenty of this article, an amount equal to the amount of such credit as calculated without regard to the limitation under subsection (c) of section six hundred twenty of this article.

(43-a) City pass-through entity tax deduction addback. In the case of a taxpayer who claims a credit allowed under subsection (g) of section thirteen hundred ten of this chapter, an amount equal to the amount of such credit.

(44) For taxable years beginning on or after January first, two thousand twenty-five, in the case of qualified production property described in paragraph two of subsection (n) of section one hundred sixty-eight of the internal revenue code, any amount which the taxpayer claimed as a deduction under subsection (a) of section one hundred sixty-seven of the internal revenue code that included an allowance solely as a result of an election made pursuant to subsection (n) of section one hundred sixty-eight of the internal revenue code.

(45) For taxable years beginning on or after January first, two thousand twenty-five, any amount claimed as a deduction under sections one hundred seventy-four and 174A of the internal revenue code in effect as of January first, two thousand twenty-five, and any amount claimed as a deduction pursuant to federal Public Law 119-21, title VII, section 70302(f)(2)(a), for foreign and domestic research or experimental

expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code.

(c) Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes; such interest income shall include the amount received as dividends from a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, which has been designated as the amount of such interest income in a written notice to shareholders not later than sixty days following the close of its taxable year; provided that, at the close of each quarter of the taxable year of such regulated investment company, at least fifty percent of the value of its total assets, as defined in subsection (c) of section eight hundred fifty-one of the internal revenue code, consists of obligations of the United States and its possessions. The aggregate amount so designated by the regulated investment company for its taxable year shall not exceed the amount determined by multiplying the total distributions paid by such regulated investment company to its shareholders with respect to that taxable year (attributable to income earned in that year), including any such distributions paid after the close of the taxable year, as described in section eight hundred fifty-five of the internal revenue code, by the ratio that the interest income received in that taxable year on obligations of the United States and its possessions, after reduction for the deductions and expenses directly or indirectly attributable thereto, bears to the investment company taxable income of such regulated investment company for such taxable year, determined without regard to subparagraph (D) of paragraph two of subsection (b) of section eight hundred fifty-two of the internal revenue code;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) (i) Pensions to officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes;

(ii) Pensions to officers and employees of the United States of America, any territory or possession or political subdivision of such territory or possession, the District of Columbia, or any agency or instrumentality of any one of the foregoing, to the extent includible in gross income for federal income tax purposes;

(3-a) Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subsection, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars, which are periodic payments attributable to personal services performed by such individual prior to his retirement from employment, which arise (i) from an employer-employee relationship or (ii) from contributions to a retirement plan which are deductible for federal income tax purposes. However, the term "pensions and annuities" shall also include distributions received by an individual who has attained the age of fifty-nine and one-half from an individual retirement account or an individual retirement annuity, as defined in section four hundred eight of the internal revenue code, and distributions received by an individual who has attained the age of fifty-nine and one-half from self-employed individual and owner-employee retirement plans which qualify under section four hundred one of the internal revenue code, whether or not the payments are periodic in nature. Nevertheless, the term "pensions and annuities" shall not include any lump sum distribution, as defined in subparagraph (D) of paragraph four of subsection (e) of section four hundred two of the internal revenue code and taxed under section six hundred three of this article. Where a husband and wife file a joint state personal income tax return, the modification provided for in this paragraph shall be computed as if they were filing separate state personal income tax returns. Where a payment would otherwise come within the meaning of the term "pensions and annuities" as set forth in this paragraph, except that such individual is deceased, such payment shall, nevertheless, be treated as a pension or annuity for purposes of this paragraph if such payment is received by such individual's beneficiary.

(3-b) (i) Disability income included in federal gross income, to the extent that such disability income would have been excluded from federal gross income pursuant to the provisions of subsection (d) of section one

hundred five of the internal revenue code of nineteen hundred fifty-four had such provisions continued in effect for taxable years commencing after December thirty-first, nineteen hundred eighty-three as they were in effect immediately prior to the repeal of such subsection.

Notwithstanding the foregoing, the sum of disability income excluded pursuant to this paragraph, and pension and annuity income excluded pursuant to paragraph three-a of this subsection, shall not exceed twenty thousand dollars.

(ii) Notwithstanding subsection (f) of this section, if a husband and wife determine their federal income tax on a joint return but are required to determine their New York income taxes separately, the amounts of exclusion allowed under subparagraph (i) of this paragraph shall be determined in the same joint manner as such amounts would have been determined under the provisions of paragraph five of subsection (d) of section one hundred five of the internal revenue code as such provisions were in effect immediately prior to the repeal of such subsection, but shall be attributed for New York income tax purposes to the spouse who would have been required to report any such amount as income if the spouses had determined their federal income taxes separately.

(iii) Where a husband and wife file a joint state income tax return, the twenty thousand dollar limitation provided in subparagraph (i) of this paragraph shall be applied as if they were filing separate state income tax returns.

(3-c) Social security benefits to the extent includible in gross income for federal income tax purposes pursuant to section eighty-six of the internal revenue code.

(4) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for New York income tax purposes than for federal income tax purposes on the last day of the last taxable year for which article sixteen imposes tax, as such article was in effect on such date, that does not exceed such difference in basis.

(5) The amount necessary to prevent the taxation under this article of any annuity or other amount of income or gain which was properly included in income or gain and was taxable under article sixteen (as such article was in effect on December thirtieth, nineteen hundred sixty) to the taxpayer, or to a decedent by reason of whose death the

taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(6) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of this state authorizing the issuance of such obligations or securities but includible in gross income for federal income tax purposes; and

(7) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, and any taxes imposed by article twenty-three of this chapter, to the extent properly included in gross income for federal income tax purposes.

(8) Compensation received for active service in the armed forces of the United States on or after October first, nineteen hundred sixty-one, and prior to September first, nineteen hundred sixty-two; provided, however, that the amount of such compensation to be deducted shall not exceed one hundred dollars for each month of the taxable year, subsequent to September, nineteen hundred sixty-one, during any part of which month the taxpayer was engaged in such service. For the purposes of this paragraph, the words "active service in the armed forces of the United States" shall mean active duty (other than for training) in the army, navy (including the marine corps), air force or coast guard of the United States as defined in title ten of the United States code.

(8-a) Compensation and bonuses received for active service in the armed forces of the United States while a prisoner of war or missing in action during the hostilities in Vietnam, to the extent includable in gross income for federal income tax purposes.

(8-b) Income received by an individual who is a member of the New York state organized militia, as such term is defined in subdivision one of section two of the military law, as compensation for performing active service within the state pursuant to either (i) state active duty orders issued in accordance with subdivision one of section six of the military law or (ii) active service of the United States pursuant to federal active duty orders, for service other than training, issued in accordance with title 10 of the United States code.

(8-c) Compensation received for active service in the armed services of the United States in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period

of combatant activities in such zone to the extent includable in gross income for federal income tax purposes.

(9) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this article but exempt from federal income tax, to the extent that such interest on indebtedness is not deductible in determining federal adjusted gross income and is attributable to a trade or business carried on by the taxpayer.

(10) Ordinary and necessary expenses paid or incurred during the taxable year for (i) the production or collection of income which is subject to tax under this article but exempt from federal income tax, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this article but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are attributable to a trade or business carried on by the taxpayer.

(11) In the case of a taxpayer who has exercised the election permitted by subsection (g) or (h) of this section, the amount or amounts required by said subsections to be subtracted from federal adjusted gross income.

(12) The amount necessary to prevent the taxation of amounts properly included in New York adjusted gross income in prior taxable years in accordance with paragraph seven of subsection (b).

(13) The amount required to be subtracted from federal adjusted gross income pursuant to subsection (i) of this section.

(14) The amount that may be subtracted from federal adjusted gross income pursuant to subsection (j) of this section.

(15) That portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty-C of the internal revenue code.

(16) for taxable years beginning after December thirty-first, two thousand two, the amount deductible pursuant to subsection (k) of this section.

(20) The amounts which may be subtracted from federal adjusted gross income pursuant to subsection (o) of this section.

(21) In relation to the disposition of stock or indebtedness of a corporation which elected under subchapter s of chapter one of the internal revenue code for any taxable year of such corporation beginning, in the case of a corporation taxable under article nine-A of this chapter, after December thirty-first, nineteen hundred eighty, the amounts required to be subtracted from federal adjusted gross income pursuant to subsection (n) of this section.

(22) In the case of a shareholder of an S corporation (A) where the election provided for in subsection (a) of section six hundred sixty has not been made with respect to such corporation, any item of income of the corporation included in federal gross income pursuant to section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amounts of income determined under subsection (s) of this section.

(23) The amounts which may be subtracted from federal adjusted gross income pursuant to subsection (p) of this section.

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

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

(26) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years

beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, an amount with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code equal to the amount allowable as the depreciation deduction under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(28) Upon the disposition of property to which paragraph twenty-six of this subsection applies, the amount, if any, by which the aggregate of the modifications described in paragraph twenty-five of subsection (b) of this section attributable to such property exceeds the aggregate of the modifications described in paragraph twenty-six of this subsection attributable to such property.

(29) Deduction for two-earner married couples. (A) For the taxable year beginning in nineteen hundred eighty-seven, in the case of a husband and wife who each have qualified earned income and who file a joint return under subsection (b) of section six hundred fifty-one for the taxable year, an amount equal to ten percent of the lesser of:

(i) thirty thousand dollars or

(ii) the qualified earned income of the spouse with the lower qualified earned income for such taxable year.

(B) For purposes of this paragraph, eligibility for the deduction provided for herein and the term qualified earned income shall be determined in the manner such eligibility and such qualified earned income would have been determined pursuant to the provisions of section two hundred twenty-one of the internal revenue code of nineteen hundred fifty-four had such provisions continued in effect for taxable years commencing after December thirty-first, nineteen hundred eighty-six as they were in effect immediately prior to the repeal of such section. Provided, however, the determination of such qualified earned income shall be made with regard only to the items therein included in New York adjusted gross income, with such adjusted gross income determined

without regard to this paragraph, and only with regard to the deductions and exclusions which are of the type properly allowable to or chargeable against such qualified earned income in such taxable year.

(30) The amount received by any person as an accelerated payment or payments of part or all of the death benefit or special surrender value under a life insurance policy as a result of any of the diagnoses specified in subparagraph (A) or (B) of paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law, and the amount received by any person as a viatical settlement pursuant to the provisions of article seventy-eight of the insurance law, to the extent includible in gross income for federal income tax purposes.

(32) Contributions made during the taxable year by an account owner to one or more family tuition accounts established under the New York state college choice tuition savings program provided for under article fourteen-A of the education law, to the extent not deductible or eligible for credit for federal income tax purposes, provided, however, the exclusion provided for in this paragraph shall not exceed five thousand dollars for an individual or head of household, and for married couples who file joint tax returns, shall not exceed ten thousand dollars; provided, further, that such exclusion shall be available only to the account owner and not to any other person.

(33) Distributions from a family tuition account established under the New York state college choice tuition savings program provided for under article fourteen-A of the education law, to the extent includible in gross income for federal income tax purposes.

* (34) The portion of the fees paid during the taxable year by a taxpayer who is a resident of a continuing care retirement community, issued a certificate of authority pursuant to article forty-six of the public health law, attributable to the cost of providing long term care benefits pursuant to a continuing care contract. The portion of the fees so attributable shall be determined in accordance with regulations promulgated by the superintendent of financial services. The deduction may not exceed the limitation that would be applicable to the taxpayer for the taxable year, with respect to eligible long term care premiums, determined under paragraph (10) of subsection (d) of section 213 of the internal revenue code.

* NB There are 2 ¶(34)'s

* (34) The amounts which may be subtracted from federal adjusted gross income pursuant to subsection (u) of this section.

* NB There are 2 ¶(34)'s

(35) Distributions, to the extent includible in gross income for federal income tax purposes, made to the taxpayer because of his or her status as a victim of Nazi persecution, as defined in P.L. 103-286, or as a spouse or a descendant in need of such victim.

(36) Items of income, to the extent includible in gross income for federal income tax purposes, attributable to, derived from or in any way related to assets stolen from, hidden from or otherwise lost to a victim of Nazi persecution, as defined in P.L. 103-286, immediately prior to, during and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of Nazi persecution, as defined in P.L. 103-286, by European insurance companies immediately prior to and during World War II. Provided, however, this subtraction from federal adjusted income does not apply to assets acquired with such assets or with the proceeds from the sale of such assets. Provided, further, this paragraph shall only apply to a taxpayer who was the first recipient of such assets after their recovery and who is a victim of Nazi persecution, as defined in P.L. 103-286, or a spouse or a descendant of such victim.

(37) In the case of a taxpayer subject to the modification provided by paragraph thirty-six of subsection (b) of this section, the amount required to be recaptured pursuant to subsection (d) of section 179 of the internal revenue code with respect to property upon which such modification was based.

(38) For taxable years beginning before January first, two thousand twenty-five, an amount of up to ten thousand dollars if a taxpayer, while living, donates one or more of the taxpayer's human organs to another human being for human organ transplantation. For purposes of this paragraph, "human organ" means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow. A subtract modification allowed under this paragraph shall be claimed in the taxable year in which the human organ transplantation occurs. Provided, however, that this deduction shall not apply to any donation for which the taxpayer has received benefits under section forty-three hundred seventy-one of the public health law.

(A) A taxpayer shall claim the subtract modification allowed under this paragraph only once and such subtract modification shall be claimed for only the following unreimbursed expenses which are incurred by the taxpayer and related to the taxpayer's organ donation:

- (i) travel expenses;
- (ii) lodging expenses; and
- (iii) lost wages.

(B) The subtract modification allowed under this paragraph shall not be claimed by a part-year resident or a non-resident of this state.

* (39) Any income or gain, to the extent it is included in federal adjusted gross income of an individual who is the sole proprietor of a qualified entity or a member of a limited liability company, a partner in a partnership or a shareholder in a New York subchapter S corporation that is a qualified entity, attributable to the operations of a qualified entity at its location in or as part of a New York state innovation hot spot, as provided in section thirty-eight of this chapter.

* NB There are 2 par (39)'s

* (39) (A) In the case of a taxpayer who is a small business or a taxpayer who is a member, partner, or shareholder of a limited liability company, partnership, or New York S corporation, respectively, that is a small business, who or which has business income and/or farm income as defined in the laws of the United States, an amount equal to fifteen percent of the net items of income, gain, loss and deduction attributable to such business or farm entering into federal adjusted gross income, but not less than zero.

(B) (i) For the purposes of this paragraph, the term small business shall mean: (I) a sole proprietor who employs one or more persons during the taxable year and who has net business income or net farm income of greater than zero but less than two hundred fifty thousand dollars;

(II) a limited liability company, partnership, or New York S corporation that during the taxable year employs one or more persons and has net farm income attributable to a farm business that is greater than zero but less than two hundred fifty thousand dollars; or

(III) a limited liability company, partnership, or New York S corporation that during the taxable year employs one or more persons and has New York gross business income attributable to a non-farm business

that is greater than zero but less than one million five hundred thousand dollars.

(ii) For purposes of this paragraph, the term New York gross business income shall mean: (I) in the case of a limited liability company or a partnership, New York source gross income as defined in subparagraph (B) of paragraph three of subsection (c) of section six hundred fifty-eight of this article; and (II) in the case of a New York S corporation, New York receipts included in the numerator of the apportionment factor determined under section two hundred ten-A of this chapter for the taxable year.

(C) To qualify for this modification in relation to a non-farm small business that is a limited liability company, partnership, or New York S corporation, the taxpayer's income attributable to the net business income from its ownership interests in non-farm limited liability companies, partnerships, or New York S corporations must be less than two hundred fifty thousand dollars.

* NB There are 2 par (39)'s

(40) Any wages received by an individual as an employee of a business located within a tax-free NY area during the first five years of such business's ten year taxable period specified in subdivision (a) of section thirty-nine of this chapter, to the extent included in federal adjusted gross income and allowed under section thirty-nine of this chapter. During the second five years of such business's ten year taxable period, the first two hundred thousand dollars of such wages in the case of a taxpayer filing as a single individual, the first two hundred fifty thousand dollars of such wages in the case of a taxpayer filing as a head of household, and three hundred thousand dollars of such wages in the case of a taxpayer filing a joint return, to the extent included in federal adjusted gross income and allowed under section thirty-nine of this chapter.

(41) The amount of any award paid to a volunteer firefighter or volunteer ambulance worker from a length of service defined contribution plan or defined benefit plan as provided for in articles eleven-A, eleven-AA, eleven-AAA and eleven-AAAA of the general municipal law, to the extent that such award is includable in gross income for federal income tax purposes; provided, however, that such award is not distributed in the form of a lump sum distribution, as defined in

subparagraph (D) of paragraph four of subsection (e) of section four hundred two of the internal revenue code and taxed under section six hundred three of this article; and provided, further, that such award is not distributed to a taxpayer who has not attained the age of fifty-nine and one-half years.

* (42) Distributions from an eligible retirement plan, as such term is defined in subparagraph (B) of paragraph (8) of subsection (c) of section four hundred two of the Internal Revenue Code, made on or after April first, two thousand seventeen and before April second, two thousand twenty-two. In order for such distributions to be eligible to be subtracted from federal adjusted gross income under this paragraph, the following conditions must be satisfied: (A) the taxpayer's primary residence was located in the area affected by the disaster declared pursuant to executive order one hundred sixty-five of two thousand seventeen, declaring a state of emergency, dated May third, two thousand seventeen; (B) such primary residence must have incurred damage due to coastal flooding, widespread erosion and water damage caused by such disaster; (C) such damage must qualify for the casualty deduction under section one hundred sixty-five of the internal revenue code (determined without regard to whether the loss exceeds ten percent of adjusted gross income); and (D) the taxpayer during the taxable year must use the entire amount of the distributions to pay for repairs needed as a result of such damage. Provided, however, that the amount of the distributions that otherwise may be subtracted under this paragraph must be reduced by any deduction claimed by the taxpayer for such damage pursuant to section one hundred sixty-five of the internal revenue code. Provided, further, that the taxpayer shall not claim a subtraction modification under paragraph three-a of this subsection for such distribution.

* NB There are 3 par (42)'s

* (42) Insurance payments received by an eligible volunteer firefighter for the cancer disability benefits in section two hundred five-cc of the general municipal law to the extent includable in gross income for federal income tax purposes.

* NB There are 3 par (42)'s

* (42) (A) The amount of any student loan that is discharged, whether in whole or in part, if such discharge was:

(i) pursuant to subsection (a) or (d) of section 437 of the Higher

Education Act of 1965 or the parallel benefit provided pursuant to part D of title IV of such act;

(ii) pursuant to section 464(c)(1)(F) of the Higher Education Act of 1965; or

(iii) otherwise discharged on account of the death or total and permanent disability of the person on whose behalf the indebtedness was incurred.

(B) For the purposes of this paragraph, "student loan" means:

(i) a student loan as defined in section 108(f)(2) of the Internal Revenue Code of 1986; or

(ii) a private education loan, as defined in section 140(7) of the Consumer Credit Protection Act.

* NB There are 3 par (42)'s

(43) The amount of any gain added back to federal adjusted gross income in a previous taxable year pursuant to paragraph forty-two of subdivision (b) of this section that is included in federal gross income for the taxable year.

(44) Any death benefit, to the extent includible in federal adjusted gross income, paid to the taxpayer in a lump sum pursuant to the COVID-19 family death benefit program established by the metropolitan transportation authority in two thousand twenty; provided, however, this subtraction shall not exceed five hundred thousand dollars and shall not apply to any benefit payable under such program other than a lump sum death benefit.

* (45) (A) The amount of an item that was included in New York adjusted gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item but was repaid by the taxpayer during the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item.

(B) No subtraction shall be allowed under this paragraph if the repayment amount is included in the deduction allowed under section six hundred fifteen or any other provision of this article, or if the repayment amount is the basis for a credit claimed by the taxpayer pursuant to section six hundred sixty-two of this article.

* NB There are 2 par (45)'s

* (45) Grants received pursuant to the COVID-19 pandemic small business recovery grant program, established in section 16-ff of the New York state urban development corporation act, to the extent includable in federal adjusted gross income.

* NB There are 2 par (45)'s

* (46) The amount of any student loan forgiveness award made by the state, including any awards made pursuant to a program established under article fourteen of the education law to the extent included in federal adjusted gross income.

* NB There are 2 par (46)'s

* (46) The amount of any federal deduction disallowed pursuant to section 280E of the internal revenue code related to the production and distribution of adult-use cannabis products, as defined by article twenty-C of this chapter, not used as the basis for any other tax deduction, exemption, or credit and not otherwise required to be added back by subsection (b) of this section in computing New York adjusted gross income.

* NB There are 2 par (46)'s

(47) For taxable years beginning on or after January first, two thousand twenty-three, the amount of any student loan discharged or forgiven by the secretary of education pursuant to any federally authorized program, to the extent included in federal adjusted gross income.

* (48) For taxable years beginning on or after January first, two thousand twenty-six, an amount of up to twenty-five thousand dollars to the extent allowed as a federal deduction pursuant to section two hundred twenty-four of the internal revenue code.

* NB There are 3 par (48)'s

* (48) For taxable years beginning on or after January first, two thousand twenty-five, in the case of qualified production property described in paragraph two of subsection (n) of section one hundred sixty-eight of the internal revenue code, the amount of any deduction allowed pursuant to subsection (a) of section one hundred sixty-seven of the internal revenue code as if the taxpayer has not made an election pursuant to subsection (n) of section one hundred sixty-eight of the internal revenue code.

* NB There are 3 par (48)'s

* (48) The amount of any distribution included in federal adjusted gross income pursuant to subsection (d) of section nine hundred sixty-two of the internal revenue code.

* NB There are 3 par (48)'s

(49) For taxable years beginning on or after January first, two thousand twenty-five, the amount of any foreign and domestic research or experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code, paid or incurred in each taxable year on and after January first, two thousand twenty-five, amortized over a sixty-month period as if the election in subsection (c) of section 174A of the internal revenue code applied to such foreign and domestic research or experimental expenditures.

(50) For taxable years beginning on or after January first, two thousand twenty-five, the remaining amount of any foreign and domestic research or experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code, paid or incurred prior to January first, two thousand twenty-five, determined as if section one hundred seventy-four of the internal revenue code in effect as of January first, two thousand twenty-two, applied to such expenditures.

(d) Modification for New York fiduciary adjustment. There shall be added to or subtracted from federal adjusted gross income (as the case may be) the taxpayer's share, as beneficiary of an estate or trust, of the New York fiduciary adjustment determined under section six hundred nineteen.

(e) Modifications of partners and shareholders of S corporations. (1) Partners and shareholders of S corporations which are not New York C corporations. The amounts of modifications required to be made under this section by a partner or by a shareholder of an S corporation (other than an S corporation which is a New York C corporation), which relate to partnership or S corporation items of income, gain, loss or deduction shall be determined under section six hundred seventeen and, in the case of a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, under section six hundred seventeen-a of this article.

(2) Shareholders of S corporations which are New York C corporations.

In the case of a shareholder of an S corporation which is a New York C corporation, the modifications under this section which relate to the corporation's items of income, loss and deduction shall not apply, except for the modifications provided under paragraph nineteen of subsection (b) and paragraph twenty-two of subsection (c) of this section.

(3) New York S termination year. In the case of a New York S termination year, the amounts of the modifications required under this section which relate to the S corporation's items of income, loss, deduction and reductions for taxes (as described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code) shall be adjusted in the same manner that the S corporation's items are adjusted under subsection (s) of section six hundred twelve.

(f) Husband and wife. If husband and wife determine their federal income tax on a joint return but are required to determine their New York income taxes separately, they shall determine their New York adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Optional modifications. Subject to the conditions provided in paragraphs three and four of this subsection, at the election of the taxpayer there shall also be subtracted from federal adjusted gross income either or both of the items set forth in paragraphs one and two of this subsection, except that only one of such items shall be subtracted with respect to any one item of property, and except that a subtraction of the item set forth in such paragraph two may not be taken with respect to taxable years commencing on or after January first, nineteen hundred eighty-seven.

(1) Depreciation with respect to any property such as described in paragraphs three or four of this subsection, and subject to the conditions provided therein, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such modification shall be allowed only upon condition that any depreciation or amortization allowed with respect to the same property in determining federal adjusted gross income shall be added to federal adjusted gross income pursuant to paragraph six of subsection (b) of this section. The total of all deductions allowed pursuant to

this paragraph in any taxable year or years with respect to any property described in paragraph three shall not exceed its cost or other basis and, with respect to property described in paragraph four, which is used in a business carried on both within and without the state shall not exceed its cost or other basis multiplied by a percentage of the excess of the taxpayer's business income over its business deductions allocated to this state for the first year such depreciation is deducted. Such percentage shall be determined by apportionment and allocation under regulations of the tax commission.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraphs three or four of this subsection, and subject to the conditions provided therein, which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such modification shall be allowed only on condition that, with respect to property described in paragraph four, which is used in a business carried on both within and without the state the deduction shall not exceed the expenditures multiplied by a percentage of the excess of the taxpayer's business income over its business deductions allocated to this state for the first year such expenditures are deducted. Such percentage shall be determined by apportionment and allocation under regulations of the tax commission, and for the taxable year and all succeeding taxable years, any deductions allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property except to the extent that its basis may be attributable to factors other than such expenditures, shall be added to federal adjusted gross income pursuant to paragraph six of subsection (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a proportionate part of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income. With respect to property which is used or to be used for research and development only in part, or during only part of

its useful life, the modification allowable pursuant to this paragraph shall be limited to a proportionate part of the expenditures relating thereto. If a modification shall have been allowed pursuant to this paragraph for all or part of such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in his return for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subsection (c) of section six hundred eighty-three of this article.

(3) For purposes of this paragraph, such modifications shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business, (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer, or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-three, or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition,

construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraphs four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clauses (A), (B) or (C) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a modification under paragraph one of this subsection with respect to tangible personal property leased to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a modification under paragraph one shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(4) For purposes of this paragraph, such modifications shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business. The modifications provided for in paragraph one of this subsection shall be allowed only with respect to tangible property which is (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-seven, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter, binding on the taxpayer or, property, the

physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-eight or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-eight, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-eight, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-seven, or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-eight, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-eight, and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraphs four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-eight. A taxpayer shall be allowed a deduction under clauses (A), (B) or (C) of the preceding sentence of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred seventy, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter binding on the taxpayer. The modification provided for in paragraph two of this subsection shall be allowed only with respect to tangible property, (A) the construction, reconstruction or

erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-three. Provided, however, a modification under paragraph one of this subsection shall be allowed with respect to property described in this paragraph only on condition that such property shall be principally used by the taxpayer in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commercial fishing. For purposes of the preceding sentence, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under subsection (h) of section six hundred twelve may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commercial fishing, in which event, a deduction shall not be allowed under such subsection (h). However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a modification under paragraph one of this subsection with respect to tangible personal property leased to any

other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a modification under paragraph one shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(5) If the modifications allowable for any taxable year pursuant to this subsection exceed the taxpayer's New York adjusted gross income, determined without the allowance of such modifications, the excess may be carried over to the following taxable year or years and may be subtracted from federal adjusted gross income for such year or years provided, however, that in no event shall such excess, insofar as it reflects subtractions taken with respect to items set forth in paragraph two of this subsection, be carried over to taxable years commencing on or after January first, nineteen hundred ninety-four.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to paragraph one or two of this subsection, the basis of such property shall be adjusted to reflect the modifications so allowed, and if the basis as so adjusted is lower than the adjusted basis of the same property for federal income tax purposes, there shall be added to federal adjusted gross income the amount of the difference between such adjusted bases.

(h) Optional modification for waste treatment facility expenditures. For taxable years commencing prior to January first, nineteen hundred eighty-seven, at the election of the taxpayer, there shall also be subtracted from federal adjusted gross income expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1) (A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization, or stabilization of industrial waste and other wastes (as the terms "industrial waste" and "other wastes" are defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal,

including the necessary pumping and transmitting facilities.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the department of environmental conservation but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission. Such term shall further include flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities that conform with this subdivision and which comply with the provisions of the state acid deposition control act set forth in title nine of article nineteen of the environmental conservation law.

(2) Such modifications shall be allowed only

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

(B) on condition that such facilities have been certified by the state commissioner of environmental conservation or his designated representative, pursuant to section 19-0309 of the environmental conservation law, as complying with the applicable provisions of the environmental conservation law, the public health law, the state sanitary code and codes, rules, regulations, permits or orders promulgated pursuant thereto, and

(C) on condition that for the taxable year and all succeeding taxable years, any deductions allowed for federal income tax purposes for such

expenditures or for depreciation or amortization of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, be added to federal adjusted gross income pursuant to paragraph five of subsection (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a proportionate amount of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income, and

(D) where the election provided for in subsection (g) of section six hundred twelve has not been exercised in respect to the same property.

(3) (A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been allowed as a modification as provided herein and if within ten years from the end of the taxable year in which such modification was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subsection (c) of section six hundred eighty-three.

(B) If a modification is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the tax commission may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subsection (c) of section six hundred eighty-three.

(C) If a modification is allowed as herein provided for expenditures paid or incurred during any taxable year in respect to an air pollution control facility on the basis of a certificate of compliance issued

pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, the tax commission may recompute the tax for the year or years for which the facility is not or was not in compliance with the applicable provisions of the environmental conservation law, the state sanitary code or codes, rules, regulations, permits or orders issued pursuant thereto, and for which a modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subsection (c) of section six hundred eighty-three.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to this paragraph, such modification shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of federal adjusted gross income for such taxable year.

(i) In the case of mines, oil and gas wells and other natural deposits, any allowance for percentage depletion pursuant to section six hundred thirteen or section six hundred thirteen A of the internal revenue code shall be added to federal adjusted gross income. However, with respect to the property as to which such addition to federal adjusted gross income is required, an allowance for depletion shall be subtracted from federal adjusted gross income in the amount that would be deductible under section six hundred eleven of such code if the deduction for an allowance for depletion were computed without reference to such section six hundred thirteen or section six hundred thirteen A. With respect to the computation of depletion pursuant to this subsection, the basis for such computation for taxable years beginning in nineteen hundred seventy-two shall be the federal basis. For subsequent taxable years, the basis for such computation shall be reduced only by the deduction for the allowance for depletion deductible pursuant to this subsection. The portion of any gain from the sale or other disposition of such property having a higher adjusted basis for New York income tax purposes than for federal income tax purposes, that does not exceed such difference in basis, shall be subtracted from federal adjusted gross income.

(j) Modification for nonpublic school tuition. (1) General. An

individual shall be entitled to subtract from his federal adjusted gross income an amount shown in the table set forth in this paragraph for his New York adjusted gross income for the taxable year, computed without the benefit of this modification, multiplied by the number of his dependents, not exceeding three, attending a nonpublic school on a full-time basis for at least four months during the regular school year for the education of such dependent in grades one through twelve, provided such individual is allowed an exemption under section six hundred sixteen for such dependent. Provided, further, that the modification under this paragraph may be taken only if such individual has paid at least fifty dollars for each such dependent in tuition to such nonpublic school for such education of such dependent. No taxpayer shall be entitled to the modification provided for in this paragraph if he claims a tuition reimbursement payment pursuant to article twelve-A of the education law.

If New York adjusted gross	The amount allowable for each
income is:	dependent is:
Less than \$9,000	\$1,000
9,000--10,999	850
11,000--12,999	700
13,000--14,999	550
15,000--16,999	400
17,000--18,999	250
19,000--20,999	150
21,000--22,999	125
23,000--24,999	100
25,000 and over	--0--

(2) Husband and wife. In determining the applicable New York adjusted gross income of a husband and wife for purposes of the table set forth in paragraph one of this subsection, the New York adjusted gross income of a husband and wife shall be the aggregate of their New York adjusted gross incomes for the taxable year, determined without the benefit of the modification provided for in this subsection, and the number of dependents with respect to which this modification may be claimed shall

be no more than three in the aggregate.

(3) Definitions. (A) "Tuition", as used in this subsection, shall mean the amount actually paid during the taxable year by the taxpayer for the enrollment of a dependent during the regular school year at a nonpublic school.

(B) "Nonpublic school", as used in this subsection, shall mean any non-profit elementary or secondary school in the state of New York, other than a public school, which (i) is providing instruction in accordance with article seventeen and section thirty-two hundred four of the education law, (ii) has not been found to be in violation of Title VI of the Civil Rights Act of nineteen hundred sixty-four, 78 Stat. 252, 42 U.S.C. § 2000 (d) and (iii) which is entitled to a tax exemption under sections five hundred one (a) and five hundred one (c) (3) of the Federal Internal Revenue Code of nineteen hundred fifty-four, as amended. The commissioner of education shall furnish to the state tax commission by February first of each year, a certified list of nonpublic schools which comply with clause (i) of this subparagraph for the preceding calendar year and shall provide such other assistance with respect to whether nonpublic schools come within clause (i) as the state tax commission may require.

(C) "Regular school year", as used in this subsection, shall mean the months of the taxable year exclusive of July and August.

(4) Additional information. Any claim for a modification under this subsection shall be accompanied by such information as the tax commission may require.

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

thousand one.

(l) For taxable years beginning after December thirty-first, two thousand two, upon the disposition of property to which subsection (k) of this section applies, the amount of any gain or loss includible in federal adjusted income shall be adjusted to reflect the inclusions and exclusions from federal adjusted income pursuant to paragraph eight of subsection (b) and paragraph sixteen of subsection (c) of this section attributable to such property.

(m) For purposes of subsections (k) and (l) of this section, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section 168 of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after December thirty-first, two thousand two. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(n) Where gain or loss is recognized for federal income tax purposes upon the disposition of stock or indebtedness of a corporation electing under subchapter s of chapter one of the internal revenue code

(1) There shall be added to federal adjusted gross income the amount

of increase in basis with respect to such stock or indebtedness pursuant to subsection (a) of section thirteen hundred seventy-six of the internal revenue code as such section was in effect for taxable years beginning before January first, nineteen hundred eighty-three and subparagraphs (A) and (B) of paragraph one of subsection (a) of section thirteen hundred sixty-seven of such code, for each taxable year of the corporation beginning, in the case of a corporation taxable under article nine-A of this chapter, after December thirty-first, nineteen hundred eighty, and in the case of a corporation taxable under article thirty-two of this chapter, after December thirty-first, nineteen hundred ninety-six, for which the election provided for in subsection (a) of section six hundred sixty of this article was not in effect, and

(2) There shall be subtracted from federal adjusted gross income

(A) the amount of reduction in basis with respect to such stock or indebtedness pursuant to subsection (b) of section thirteen hundred seventy-six of the internal revenue code as such section was in effect for taxable years beginning before January first, nineteen hundred eighty-three and subparagraphs (B) and (C) of paragraph two of subsection (a) of section thirteen hundred sixty-seven of such code, for each taxable year of the corporation beginning, in the case of a corporation taxable under article nine-A of this chapter, after December thirty-first, nineteen hundred eighty, and in the case of a corporation taxable under article thirty-two of this chapter, after December thirty-first, nineteen hundred ninety-six, for which the election provided for in subsection (a) of section six hundred sixty of this article was not in effect and

(B) the amount of any modifications to federal gross income with respect to such stock pursuant to paragraph twenty of subsection (b) of this section.

(o) Modifications for new business investment gains and certain new business investments.

1. For purposes of this subsection, the following definitions shall apply:

(A) "New business investment gain" means gain from the sale of a new business investment issued to the taxpayer before January first, nineteen hundred eighty-eight, if:

(i) such new business investment is, in the hands of the person selling the same (whether or not the taxpayer), a capital asset as defined in section 1221 of the internal revenue code of nineteen hundred fifty-four, as amended, and

(ii) such new business investment was held by such person for the period specified in paragraph two of this subsection.

(B) "New business" means a corporation or partnership organized or formed under the laws of any state which:

(i) adopts a plan on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, to conduct a new business within the meaning and intent of this section and to issue new business investments, as defined in this subsection, and

(ii) is, at the date of adoption of such plan, subject to taxation (whether or not any amount is owing) under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six of article nine of this chapter, or under article nine-a of this chapter or article twenty-three of this chapter, or would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) if such article were still in effect, and the first taxable period for which such new business became subject to such taxation commenced on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, and such first taxable period includes the date of adoption of such plan; if not so subject to taxation, the new business must be subject to taxation under such sections or articles for the first time within one year from the date of adoption of such plan, and

(iii) is conducted (or will be conducted, as evidenced by such plan) whereby at least ninety percent of the assets (valued at original cost) are located and employed in this state and eighty percent of the employees (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of section two hundred ten of this chapter and, in addition, in the case of a partnership, excluding partners) are principally employed in this state during each taxable period, or part thereof, as required by clause (iv) of this subparagraph, and

(iv) within ninety days after the adoption of such plan, or, if a return is required, as part of such return, under such article nine,

article nine-A or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two), whichever is sooner, shall file a new business certificate with the state tax commission attesting to whether it meets, if subject to taxation under such articles, or intends to meet, if not so subject, all of the conditions stated in clauses (i), (ii) and (iii) of this subparagraph within the time set forth therein. Thereafter, during the first four taxable years of such new business, along with, and as part of, any return required under such articles, such new business shall make and file a new business certificate for the period covered by such return attesting to whether it has met the conditions specified in this subparagraph during the taxable period covered by such return. If no return is required under such articles, such certificate shall be filed annually on or before the fifteenth day of March which shall cover the twelve consecutive calendar month period ending on the last day of December immediately preceding such March fifteenth. If such new business fails to meet such conditions specified in this subparagraph, it shall, in addition, give notice of this fact, within the time prescribed by the state tax commission, to the holders of its "new business investments." The state tax commission shall prescribe the form and content of such new business certification and may require a new business to file such certificate for periods (even if no return is filed or required, but for this section) covering up to eight years from the date of adoption of such plan, as in its discretion, it deems the same necessary for the enforcement of this subparagraph, and

(v) Special rules:

(1) For any taxable period, in order to constitute a new business, a business enterprise must have derived more than sixty percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities.

(2) A new business does not include (i) any new business of which twenty-five percent or more of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine of this

chapter, or under article nine-A, thirty-two or thirty-three of this chapter or (ii) any new business substantially similar in operation and in ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, article twenty-three or which would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two whereby the intent and purpose of this subsection would be evaded.

(C) "New business investment" means and includes the following investments issued before January first, nineteen hundred eighty-eight by a new business pursuant to a plan described in clause (i) of subparagraph (B) of this paragraph for money or other property (other than stock or securities) on or before the expiration of the third taxable year of such new business (excluding any short period immediately preceding such taxable year because the new business was not in existence for an entire taxable year) or forty-two months from the adoption of such plan, whichever is sooner: (i) original issuance capital stock as part of a new issue, (ii) other original issuance securities of a new issue of a like nature as stocks which are designed as a means of investment and issued for the purpose of financing corporate enterprises and providing for a distribution of rights in such enterprises, (iii) debt obligations such as bonds and debentures for a term of at least one year, whether secured or unsecured, and (iv) certificates and other instruments representing proprietary interests, whether limited or otherwise, in and assumption of general liabilities, whether limited or otherwise, of a partnership enterprise.

2. A taxpayer may subtract from his federal adjusted gross income a portion of an amount constituting a new business investment gain, as follows:

If new business
investment held for:

At least four years, but
less than five years

The modification is equal to the
following proportion of the gain
includable in federal adjusted
gross income:

twenty-five percent

At least five years, but
less than six years
At least six years

fifty percent
one hundred percent

3. Where, within six months of the realization of a new business investment gain allowable as the basis of a modification under paragraph two of this subsection, such modification is equal to less than one hundred percent of the portion of the gain includable in federal adjusted gross income and the taxpayer purchases a new business investment which is then held for a period of at least six months, the taxpayer may subtract from his federal adjusted gross income ten percent (but not an amount that will reduce the portion of such gain included in his New York income below zero) of the amount of such gain where the purchase price of the new business investment is equal to or greater than the proceeds of the sale giving rise to such gain. Where the purchase price of the new business investment is less than an amount equal to the proceeds of such sale, the modification allowable under this paragraph shall be equal to ten percent of an amount equal to the product of (A) the amount of the gain and (B) a fraction the numerator of which is the purchase price of the new investment and the denominator of which is an amount equal to the proceeds of such sale. The modification allowable under this paragraph may be utilized, at the option of the taxpayer, with respect to the taxable year in which the new business investment gain is realized or the year containing the last day of the six-month retention period described in this paragraph.

4. The state tax commission may prescribe such rules and regulations as may be necessary to carry out the purposes of this subsection.

(p) New business investment deferral. For taxable years beginning before January first, nineteen hundred eighty-eight, at the option of the taxpayer, there may be subtracted from federal adjusted gross income a reinvested amount of long-term capital gain realized in a taxable year from the sale of a capital asset, as such term is defined in section 1221 of the internal revenue code, which is not a new business investment. A reinvested amount of long-term capital gain shall mean an amount which bears the same ratio to the long-term capital gain realized from the sale of a capital asset which was includable in New York

adjusted gross income as that portion of the sale proceeds which is reinvested, within one year from date of sale, in a New York new business bears to the total sale proceeds. For the purposes of this subsection, a New York new business is a business enterprise which (1) has been a taxpayer under this article for no more than three taxable years (including short taxable years), (2) over fifty percent of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is not owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine of this chapter, or under article nine-A, thirty-two or thirty-three of this chapter, (3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, article twenty-three or which would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two whereby the intent and purpose of this subsection would be evaded, (4) locates and employs at least ninety percent of its assets in the state, (5) employs principally in the state eighty percent of its employees (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of section two hundred ten of this chapter and, in addition, in the case of a partnership, excluding partners), (6) derives less than forty percent of its gross income from dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities and (7) reports at least twenty-five hundred dollars in gross income in any taxable year. The reinvested amount must qualify as a capital asset as defined in section 1221 of the internal revenue code and must be retained by the taxpayer for at least twelve months. The modification allowable under this subsection shall be utilized with respect to the taxable year in which the twelve month retention period ends. The commissioner of taxation and finance may require annual information reports on the investments in new businesses made pursuant to this subsection, and such other reports as he may require to ensure against the evasion of the intent and purposes of this subsection.

(q) An amount deferred under subsection (p) hereof shall be added to federal adjusted gross income when the reinvestment in the New York new business which qualified a taxpayer for such deferral is sold.

(r) Related members expense add back. (1) Definitions. (A) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(B) Effective rate of tax. "Effective rate of tax" means, as to any state or U.S. possession, the maximum statutory rate of tax imposed by the state or possession on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or U.S. possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

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

(2) Royalty expense add backs. (A) For the purpose of computing New York adjusted gross income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this subsection shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, meets all of the following requirements: (I) the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this subsection shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the related member was subject to tax on or measured by its net income in this state or another state or possession of the United States or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section six hundred one of this

article for the taxable year.

(iii) The adjustment required in this subsection shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective tax rate at least equal to that imposed by this state; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

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

(s) New York S termination year. (1) General. In the case of a New York S termination year, the amount of any item of S corporation income, loss and deduction included in the shareholder's federal adjusted gross income and any reductions for taxes (as described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code) shall be adjusted in accordance with the treatment provided in paragraph two or three of this subsection.

(2) Pro rata allocation. Unless paragraph three of this subsection applies, an equal portion of each S corporation item shall be assigned to each day of the S corporation's taxable year for federal income tax purposes. The portion of each such item thereby assigned to the S short year shall be treated as an item of a New York S corporation, and the portion of each such item thereby assigned to the C short year shall be treated as an item of an S corporation which is a New York C

corporation.

(3) Normal tax accounting. The portion of each S corporation item assigned to the S short year and the C short year shall be determined using normal tax accounting rules if:

(A) there is a sale or exchange of fifty percent or more of the stock in such corporation during the New York S termination year; or

(B) the corporation so elects, in the manner the commissioner may provide. No election under this subparagraph shall be effective unless all persons who are shareholders during the S short year and all persons who are shareholders on the first day of the C short year consent to such election.

(u) Emerging technology investment deferral. In the case of any sale of a qualified emerging technologies investment held for more than thirty-six months and with respect to which the taxpayer elects the application of this subsection, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any qualified emerging technologies investment purchased by the taxpayer during the three hundred sixty-five-day period beginning on the date of such sale, reduced by any portion of such cost previously taken into account under this subsection. For purposes of this subsection the following shall apply:

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

(2) A qualified emerging technology investment is a qualified investment, that was held by the taxpayer for at least thirty-six months, in a company defined in paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law or an investment in a partnership or limited liability company that is taxed as a partnership to the extent that such partnership or limited liability company invests in qualified emerging technology companies.

(3) For purposes of determining whether the nonrecognition of gain under this subsection applies to a qualified emerging technologies investment that is sold, the taxpayer's holding period for such

investment and the qualified emerging technologies investment that is purchased shall be determined without regard to Internal Revenue Code § 1223.

(v) Amounts deferred. The amount deferred under subsection (u) of this section shall be added to federal adjusted gross income when the reinvestment in the New York qualified emerging technology company which qualified a taxpayer for such deferral is sold.

(w) Alimony modifications. (1) In the case of applicable alimony or separate maintenance payments, the following modifications shall apply:

(A) There shall be subtracted from federal adjusted gross income any applicable alimony or separate maintenance payments made by the taxpayer during the taxable year.

(B) There shall be added to federal adjusted gross income any applicable alimony or separate maintenance payments received by the taxpayer during the taxable year.

(2) (A) The term "alimony or separate maintenance payments" means payments as defined under section seventy-one of the internal revenue code in effect immediately prior to the enactment of Public Law 115-97.

(B) The term "applicable alimony or separate maintenance payments" means payments made under an alimony or separation instrument (as defined in section seventy-one of the internal revenue code in effect immediately prior to the enactment of Public Law 115-97) that was executed after December thirty-first, two thousand eighteen, and any divorce or separation instrument executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.

(x) Qualified moving expense reimbursement and moving expenses. (1) In the case of applicable qualified moving expense reimbursement and moving expenses, the following modifications shall apply:

(A) There shall be subtracted from federal adjusted gross income any applicable qualified moving expense reimbursement received by the taxpayer during the taxable year.

(B) There shall be subtracted from federal adjusted gross income any applicable moving expenses paid by the taxpayer during the taxable year.

(2) Applicable qualified moving expense reimbursement and moving expenses are those deductions as allowed by paragraph (g) of sections one hundred thirty-two and section two hundred seventeen, respectively,

of the internal revenue code immediately prior to the enactment of Public Law 115-97.

(y) Depreciation and interest adjustments for covered properties owned by an institutional real estate investor. (1) Notwithstanding any other provision of this section, in the case of a taxpayer that is a partner, member or shareholder of an entity that is an institutional real estate investor as defined in paragraph (c-4) of subdivision nine of section two hundred eight of this chapter, New York adjusted gross income shall be computed with adjustments for depreciation and interest related to covered properties as set forth in this subsection.

(2) Depreciation deductions. With respect to covered properties, no deduction for depreciation allowed under the internal revenue code or this section shall be allowed.

(3) Federal interest deductions. With respect to covered properties, the interest deduction for federal income tax purposes allowed under section one hundred sixty-three of the internal revenue code shall not be allowed and must be added back in the computation of New York adjusted gross income, except with respect to interest paid or accrued in the taxable year when such covered property is sold to an individual for use as the principal residence of such individual or sold to a nonprofit organization that has as its principal purpose the creation, development, or preservation of affordable housing. For purposes of this paragraph, any amount of interest that would have been allowed under section one hundred sixty-three of the internal revenue code in connection with a covered property but for an election to treat such interest as chargeable to capital account shall be treated as an amount allowed under section one hundred sixty-three of the internal revenue code.

§ 613. New York deduction of a resident individual. The New York deduction of a resident individual shall be his New York standard deduction unless he elects to deduct his New York itemized deduction under the conditions set forth in section six hundred fifteen of this article. If an individual taxpayer has elected to deduct his New York itemized deduction computed pursuant to section six hundred fifteen of this article, but the department determines that the New York standard

deduction allowable pursuant to section six hundred fourteen of this article is greater, the department shall recompute the taxpayer's tax liability pursuant to section six hundred eleven of this article using the New York standard deduction provided in section six hundred fourteen of this article. The department will notify the taxpayer of any adjustment to the election.

§ 614. New York standard deduction of a resident individual. (a)

Unmarried individual. For taxable years beginning after nineteen hundred ninety-six, the New York standard deduction of a resident individual who is not married nor the head of a household nor a surviving spouse nor an individual who is claimed as a dependent by another New York state taxpayer shall be seven thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be seven thousand four hundred dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be six thousand six hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be six thousand dollars.

(b) Husband and wife filing jointly and surviving spouse. For taxable years beginning after two thousand five, the New York standard deduction of a husband and wife whose New York taxable income is determined jointly or a surviving spouse shall be fifteen thousand dollars; for taxable years beginning after two thousand two and before two thousand six, such standard deduction shall be fourteen thousand six hundred dollars; for taxable years beginning in two thousand two, such standard deduction shall be fourteen thousand two hundred dollars; for taxable years beginning in two thousand one, such standard deduction shall be thirteen thousand four hundred dollars; for taxable years beginning after nineteen hundred ninety-six and before two thousand one, such standard deduction shall be thirteen thousand dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be twelve thousand three hundred fifty dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be ten thousand eight hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred

ninety-five, such standard deduction shall be nine thousand five hundred dollars.

(c) Head of household. For taxable years beginning after nineteen hundred ninety-six, the New York standard deduction of an individual who is a head of household shall be ten thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be ten thousand dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be eight thousand one hundred fifty dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be seven thousand dollars.

(d) Married individuals filing separately. For taxable years beginning after two thousand five, the New York standard deduction of a married individual filing a separate return shall be seven thousand five hundred dollars; for taxable years beginning after nineteen hundred ninety-six and before two thousand six, such standard deduction shall be six thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be six thousand one hundred seventy-five dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be five thousand four hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be four thousand seven hundred fifty dollars.

(e) Standard deduction of a dependent individual. For taxable years beginning after nineteen hundred ninety-six, the New York standard deduction of a resident individual whose federal exemption amount is zero shall be three thousand dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be two thousand nine hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-six, such standard deduction shall be two thousand eight hundred dollars.

(f) Adjusted standard deduction. For taxable years beginning after two thousand seventeen, the standard deductions set forth in this section shall be the amounts set forth in this section adjusted by the cost of living adjustment prescribed in section six hundred one-a of this part for tax years two thousand thirteen through two thousand seventeen.

§ 615. New York itemized deduction of a resident individual. (a)

General. If federal taxable income of a resident individual is determined by itemizing deductions or claiming the federal standard deduction from his or her federal adjusted gross income, he or she may elect to deduct his or her New York itemized deduction or claim his or her New York standard deduction. The New York itemized deduction of a resident individual means the total amount of his or her deductions from federal adjusted gross income allowed, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, as such deductions existed immediately prior to the enactment of Public Law 115-97 with the modifications specified in this section, except as provided for under subsections (f) and (g) of this section.

(b) Husband and wife.

(1) A husband and wife, both of whom are required to file returns under this article, shall be allowed New York itemized deductions only if both elect to take New York itemized deductions.

(2) The total of the New York itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose New York taxable incomes are required to be determined separately, shall be divided between them as if their federal taxable incomes had been determined separately.

(c) Modifications reducing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) state and local general sales taxes as defined in subsection (b) of section one hundred sixty-four of the internal revenue code, to the extent included in federal itemized deductions or income taxes imposed by this state or any other taxing jurisdiction, except city earnings taxes on nonresidents that are imposed upon and paid by taxpayers for taxable years beginning after December thirty-first, nineteen hundred seventy and before January first, two thousand, pursuant to the authority of former section twenty-five-m of the general city law, to the extent that the amount of such tax exceeds the tax computed as if the rates were one-fourth of one percent of wages subject to tax and three-eighths of one percent of net earnings from self-employment

subject to tax;

(2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this article; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for (i) the production or collection of income which is exempt from tax under this article, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this article, to the extent that such expenses and premiums are deductible in determining federal taxable income.

(4) premiums paid for long-term care insurance to the extent that such premiums are deductible in determining federal taxable income.

* (5) real property taxes imposed by this state or any other taxing jurisdiction on renters pursuant to section nine hundred twenty-six-a of the real property tax law.

* NB (Effective pending ruling by Commissioner of Internal Revenue)

(6) in the case of a shareholder of an S corporation

(A) where the election provided for in subsection (a) of section six hundred sixty has not been made, S corporation items of deduction included in federal itemized deductions, and

(B) in the case of a New York S termination year, the portion of such items assigned to the period beginning on the day the election ceases to be effective, as determined under subsection (s) of section six hundred twelve.

(8) The amount of any federal deduction for taxes imposed under article twenty-three of this chapter.

(9) with respect to a taxpayer who has claimed the farm donations to food pantries credit pursuant to subsection (n-2) of section six hundred six of this article, the taxpayer's New York itemized deductions shall be reduced by any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code with respect to such donations.

(d) Modifications increasing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be increased by:

(1) an amount, not exceeding one hundred and fifty dollars in the aggregate, for net premiums paid or incurred by a taxpayer during the taxable year with respect to any life insurance or endowment policy upon his life; provided, however, for taxable years beginning on or after January first, nineteen hundred seventy-one, such amount shall not exceed one hundred dollars in the aggregate; and for taxable years beginning on or after January first, nineteen hundred seventy-two, such amount shall not exceed fifty dollars in the aggregate; and for taxable years beginning on or after January first, nineteen hundred seventy-three, no such increase in the amount of deductions from federal adjusted gross income shall be allowed;

(2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this article but exempt from federal income tax, to the extent that such interest on indebtedness is not deductible for federal income tax purposes and is not subtracted from federal adjusted gross income pursuant to paragraph (9) of subsection (c) of section six hundred twelve; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for (i) the production or collection of income which is subject to tax under this article but exempt from federal income tax, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this article but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are not subtracted from federal adjusted gross income pursuant to paragraph (10) of subsection (c) of section six hundred twelve.

(4) allowable college tuition expenses, as defined in paragraph two of subsection (t) of section six hundred six of this article, multiplied by the applicable percentage. Such applicable percentage shall be twenty-five percent for taxable years beginning in two thousand one, fifty percent for taxable years beginning in two thousand two, seventy-five percent for taxable years beginning in two thousand three and one hundred percent for taxable years beginning after two thousand three. Provided, however, no deduction shall be allowed under this

paragraph to a taxpayer who claims the credit provided under subsection (t) of section six hundred six of this article.

(5) the full amount of union dues paid during the taxable year if the taxpayer was not allowed federal miscellaneous itemized deductions by operation of section 67 of the internal revenue code. If any amount of union dues representing federal miscellaneous itemized deductions was allowed, then the amount allowed as a New York itemized deduction for union dues paid shall be a percentage of the union dues disallowed by the operation of section 67 of the internal revenue code computed as follows. The amount allowed as a New York itemized deduction shall be computed by multiplying the total union dues paid by the taxpayer during the taxable year by a percentage determined by subtracting from one, a fraction where the numerator is the amount of federal miscellaneous deductions allowed and the denominator is the aggregate federal miscellaneous itemized deductions before application of the two-percent floor under section 67 of the internal revenue code. For the purposes of this paragraph, union dues are those amounts that are deductible as union dues and agency shop fees under section 162 of the internal revenue code.

(e) Modifications of partners and shareholders of S corporations. (1) Partners and shareholders of S corporations which are not New York C corporations. The amounts of modifications under subsection (c) or under paragraph (2) or (3) of subsection (d) required to be made by a partner or by a shareholder of an S corporation (other than an S corporation which is a New York C corporation), with respect to items of deduction of a partnership or S corporation shall be determined under section six hundred seventeen.

(2) Shareholders of S corporations which are New York C corporations. In the case of a shareholder of an S corporation which is a New York C corporation, the modifications under this section which relate to the corporation's items of deduction shall not apply, except for the modification provided under paragraph six of subsection (c).

(3) New York S termination year. In the case of a New York S termination year, the amounts of the modifications required under this section which relate to the S corporation's items of deduction shall be adjusted in the same manner that the S corporation's items are adjusted under subsection (s) of section six hundred twelve.

(f) Except as provided under subsection (g) of this section, the New York itemized deduction otherwise allowable under this section shall be reduced by the sum of the amounts determined under paragraphs one and two of this subsection.

(1) An amount equal to the New York itemized deduction otherwise allowable under subsection (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction,

(A) in the case of an unmarried individual or married individual filing a separate return, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over one hundred thousand dollars and the denominator of which is fifty thousand dollars;

(B) in the case of a married individual filing a joint return or a surviving spouse, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over two hundred thousand dollars and the denominator of which is fifty thousand dollars;

(C) in the case of a head of household, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over one hundred fifty thousand dollars and the denominator of which is fifty thousand dollars.

(2) An amount equal to the New York itemized deduction of an individual otherwise allowable under subsection (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over four hundred seventy-five thousand dollars and the denominator of which is fifty thousand dollars.

(g) Notwithstanding subsection (a) of this section, the New York itemized deduction for charitable contributions shall be the amount allowed under section one hundred seventy of the internal revenue code

or the amount allowable pursuant to paragraph three of this subsection, as modified by paragraph nine of subsection (c) of this section and as limited by this subsection. (1) With respect to an individual whose New York adjusted gross income is over one million dollars and no more than ten million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code or allowable pursuant to paragraph three of this subsection for taxable years beginning after two thousand nine and before two thousand twenty-five. With respect to an individual whose New York adjusted gross income is over one million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code or allowable pursuant to paragraph three of this subsection for taxable years beginning in two thousand nine or after two thousand twenty-four.

(2) With respect to an individual whose New York adjusted gross income is over ten million dollars, the New York itemized deduction shall be an amount equal to twenty-five percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code or allowable pursuant to paragraph three of this subsection for taxable years beginning after two thousand nine and ending before two thousand thirty.

(3) Contributions to an organization that meets the definition of an exempt organization under paragraph four of subdivision (a) of section eleven hundred sixteen of this chapter or to organizations that have applied for, and were approved for tax-exempt status under subsection (c) of section five hundred one of the internal revenue code by the internal revenue service before January first, two thousand twenty-five, will continue to qualify as charitable contributions allowable as a New York itemized deduction under this subsection, to the extent otherwise allowable under section one hundred seventy of the internal revenue code, even if the internal revenue service revokes such organization's tax-exempt status, so long as the organization establishes that the revocation was unrelated to the organization's charitable mission and that it continues to meet the statutory requirements of paragraph three of subsection (c) of section five hundred one of the internal revenue

code and the regulations and authorities promulgated thereunder.

§ 616. New York exemptions of a resident individual. (a) General. For taxable years beginning after nineteen hundred eighty-seven, a resident individual shall be allowed a New York exemption of one thousand dollars for each exemption for which he is entitled to a deduction for the taxable year under section one hundred fifty-one(c) of the Internal Revenue Code; and for taxable years beginning in nineteen hundred eighty-seven, a resident individual other than a taxpayer whose federal exemption amount is zero shall be allowed a New York exemption of nine hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes.

(b) Husband and wife. If the New York income taxes of a husband and wife are required to be separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to the New York exemptions under subsection (a) of this section to which each would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

§ 617. Resident partners and shareholders of S corporations. (a) Partner's and shareholder's modifications. In determining New York adjusted gross income and New York taxable income of a resident partner or a resident shareholder of an S corporation (other than an S corporation which is a New York C corporation), any modification described in subsections (b), (c) or (d) of section six hundred twelve, subsection (c) of section six hundred fifteen or paragraphs (2) or (3) of subsection (d) of such section, which relates to an item of partnership or S corporation income, gain, loss or deduction shall be made in accordance with the partner's distributive share or the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's or shareholder's share of such item shall be determined in accordance with his share, for federal income tax purposes, of

partnership or S corporation taxable income or loss generally. In the case of a New York S termination year, his pro rata share of any such item shall be determined under subsection (s) of section six hundred twelve.

(b) Character of items. Each item of partnership and S corporation income, gain, loss, or deduction shall have the same character for a partner or shareholder under this article as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if realized directly from the source from which realized by the partnership or S corporation or incurred in the same manner as incurred by the partnership or S corporation.

(c) New York tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this article, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

§ 617-a. Residents; special provisions. Notwithstanding any other provisions of this article, the New York adjusted gross income and the New York taxable income of a resident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, shall not include any item of income, gain, loss or deduction of such business, which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes. Provided however, such individual's New York adjusted gross income shall include his distributive or pro rata share of the allocated entire net income as determined by such business under sections fifteen hundred three and fifteen hundred four of this chapter. In the event such allocated entire net income is a loss, there shall not be

subtracted from federal adjusted gross income in computing New York adjusted gross income such individual's distributive share of such loss.

§ 618. New York taxable income of a resident estate or trust. The New York taxable income of a resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

(2) There shall be subtracted the modifications described in paragraphs (4) and (5) of subsection (c) of section six hundred twelve, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(3) There shall be added or subtracted (as the case may be) the share of the estate or trust in the New York fiduciary adjustment determined under section six hundred nineteen.

* (4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs (6), (10), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (38) and (39) of subsection (b) and in paragraphs (11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section six hundred twelve of this part.

* NB Effective until ch. 782/88 expires

* (4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs (6), (10), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (38) and (39) of subsection (b) and in paragraphs (11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section six hundred twelve of this part.

* NB Effective when ch. 782/88 expires

(5) In the case of a trust, there shall be added the amount of any includible gain, reduced by any deductions properly allocable thereto, upon which tax is imposed for the taxable year pursuant to section six hundred forty-four of the internal revenue code.

§ 619. Share of a resident estate, trust or beneficiary in New York

fiduciary adjustment.

(a) General. An adjustment shall be made in determining New York taxable income of a resident estate or trust under section six hundred eighteen, or New York adjusted gross income of a resident beneficiary of any estate or trust under subsection (d) of section six hundred twelve, in the amount of the share of each in the New York fiduciary adjustment as determined in this section.

(b) Definition. The New York fiduciary adjustment shall be the net amount of the modifications described in section six hundred twelve (including subsection (d) if the estate or trust is a beneficiary of another estate or trust), in subsection (c) and paragraphs (2) and (3) of subsection (d) of section six hundred fifteen, and in subsection (e) of this section, which relate to items of income, gain, loss or deduction of an estate or trust. The net amount of such modifications shall not include:

(1) Any modification described in paragraphs (1) and (2) of subsection (b) and paragraphs (1), (2), (4), (5), (6) and (7) of subsection (c) of section six hundred twelve with respect to any amount which, pursuant to the terms of the governing instrument, is paid or permanently set aside for a charitable purpose during the taxable year, and

(2) Any modification described in paragraph (4) or (5) of subsection (c) of section six hundred twelve, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(c) Shares of New York fiduciary adjustment.

(1) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the New York fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust.

(2) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the New York fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the New York fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate attribution of modifications. The tax commission may by regulation establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable. Such method may be used by the fiduciary in his discretion whenever the allocation of the fiduciary adjustment pursuant to subsection (c) would result in an inequity which is substantial both in amount and in relation to the amount of the fiduciary adjustment.

(e) Additional modifications. (1) For any taxable year beginning after December thirty-first, two thousand seventeen, and before January first, two thousand twenty-six, to the extent that the estate or trust claimed a deduction for taxes under section 164 of the internal revenue code that was limited to ten thousand dollars as provided in section 164(b)(6)(B) or was denied as a result of section 164(b)(6)(A), there shall be subtracted the taxes paid or accrued in that taxable year by an estate or trust that the estate or trust was not able to deduct for federal income tax purposes because of such limitation or denial, other than state and local sales taxes and income taxes described in paragraph one of subsection (c) of section six hundred fifteen of this part. In determining the makeup of the ten thousand dollars of deduction claimed by the estate or trust under section 164 of the internal revenue code, it shall be presumed that the ten thousand dollars of deduction first comprises the state and local sales taxes or income taxes the estate or trust accrued or paid during the taxable year.

(2) For any taxable year beginning after December thirty-first, two thousand seventeen, and before January first, two thousand twenty-six, there shall be subtracted the miscellaneous itemized deductions as described in and limited by section 67 of the internal revenue code (but excluding the deductions described in subsection (e) of section 67), but determined without regard to subsection (g) of such section.

(3) For any taxable year, there shall be added the amount of any deduction allowed pursuant to section 199A of the internal revenue code.

§ 620. Credit for income tax of another state. (a) General. A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed on such individual for the taxable

year by another state of the United States, a political subdivision of such state, the District of Columbia or a province of Canada, upon income both derived therefrom and subject to tax under this article. The term "income tax imposed" in the previous sentence shall not include the portion of such tax (determined in the manner provided for in section six hundred twenty-A) which is imposed upon the ordinary income portion (or part thereof) of a lump sum distribution which is subject to the separate tax imposed by section six hundred three.

(b) Pass-through entity taxes. (1) A resident shall be allowed a credit against the tax otherwise due pursuant to this article for any pass-through entity tax substantially similar to the tax imposed pursuant to article twenty-four-A of this chapter imposed on the income of a partnership or S corporation of which the resident is a partner, member or shareholder for the taxable year by another state of the United States, a political subdivision of such state, or the District of Columbia upon income both derived therefrom and subject to tax under this article.

(2) Such credit shall be equal to the taxpayer's direct share of the pass-through entity tax paid by the electing partnership or electing S corporation to such other state, political subdivision of such other state or the District of Columbia.

(3) However, such credit will be allowed on tax paid only if:

(A) the state of the United States, political subdivision of such state, or the District of Columbia imposing such tax also imposes an income tax substantially similar to the tax imposed under this article; and

(B) in the case of taxes paid by an S corporation, such S corporation was treated as a New York S corporation.

(c) Limitations. (1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's New York income subject to taxation by such other jurisdiction by the total amount of the taxpayer's New York income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's New York income.

(3) In the case of a taxpayer who elects to claim the foreign tax credit for federal income tax purposes, the credit under this section for income tax imposed by a province of Canada shall be allowed for that portion of the provincial tax not claimed for federal purposes for the taxable year or a preceding taxable year, provided however, to the extent the provincial tax is claimed for federal purposes for a succeeding taxable year, the credit under this section must be added back in such succeeding taxable year. The provincial tax shall be deemed to be claimed last for federal income tax purposes and for purposes of this subsection.

(d) Definition. For purposes of this section New York income means:

(1) the New York adjusted gross income of an individual, or

(2) the amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his New York adjusted gross income under section six hundred twelve.

§ 620-A. Credit against separate tax. (a) General. A resident shall be allowed a credit against the separate tax otherwise due under section six hundred three for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state, the District of Columbia or a province of Canada, upon the ordinary income portion (or part thereof) of a lump sum distribution both derived therefrom and subject to tax under such section. Where such ordinary income portion (or part thereof) of a lump sum distribution is not subject to separate income taxation by such other state or its political subdivision or the District of Columbia or a province of Canada, but is included as income under an income tax imposed by such jurisdiction, the portion of the tax on such income which constitutes the income tax imposed on such ordinary income portion (or part thereof) of a lump sum distribution shall be an amount bearing the same ratio to the entire tax paid to such other jurisdiction as the amount of the ordinary income portion (or part thereof) of a lump sum distribution included in the income subject to such tax bears to all income subject to such tax.

(b) Limitations. (1) The credit under this section shall not exceed the percentage of the tax otherwise due under section six hundred three

determined by dividing the portion of the taxpayer's ordinary income portion of a lump sum distribution taxable both under section six hundred three and by such other jurisdiction by the total amount of the taxpayer's ordinary income portion of a lump sum distribution taxable under section six hundred three.

(2) The credit under this section shall not reduce the tax otherwise due under section six hundred three to an amount less than would have been due if the portion of the ordinary income portion of a lump sum distribution taxable both under section six hundred three and by such other jurisdiction were excluded from the computation of the separate tax imposed under section six hundred three.

(3) In the case of a taxpayer who elects to claim the foreign tax credit for federal income tax purposes, the credit under this section for income tax imposed by a province of Canada shall be allowed for that portion of the provincial tax not claimed for federal purposes for the taxable year or a preceding taxable year, provided however, to the extent the provincial tax is claimed for federal purposes for a succeeding taxable year, the credit under this section must be added back in such succeeding taxable year. The provincial tax shall be deemed to be claimed last for federal income tax purposes and for purposes of this subsection.

§ 621. Credits to trust beneficiary receiving accumulation distribution. (a) General. A resident beneficiary of a trust whose New York adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section six hundred sixty-five of the internal revenue code, including a beneficiary who is required to make the modification required by paragraph forty of subsection (b) of section six hundred twelve of this part, shall be allowed (1) a credit against the tax otherwise due under this article for all or a proportionate part of any tax paid by the trust under this article or under former article sixteen of this chapter (as such article was in effect on or before December thirtieth, nineteen hundred sixty), for any preceding taxable year which would not have been payable if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in section six hundred sixty-six of the internal

revenue code; and (2) a credit against the taxes imposed by this article for the taxable year for any income tax imposed on the trust for the taxable year or any prior taxable year by another state of the United States, a political subdivision thereof, or the District of Columbia, upon income both derived therefrom and subject to tax under this article, provided that the amount of the credit shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the income that is both taxable to the trust in such other jurisdiction and taxable to the beneficiary under this article by the total amount of the beneficiary's New York income.

(b) Limitation. The credits under this section shall not reduce the tax otherwise due from the beneficiary under this article to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his New York adjusted gross income.

§ 624. Computation of separate tax on the ordinary income portion of lump sum distributions received by resident individuals, estates and trusts.

(a) Amount of separate tax. The amount of tax imposed under section six hundred three for any taxable year, with respect to the ordinary income portion of a lump sum distribution received by a resident individual, estate or trust is an amount equal to five times the tax which would be imposed by subsection (c) of section six hundred one if the recipient of such lump sum distribution were an individual referred to in such subsection and the New York taxable income were an amount equal to one-fifth of the excess of:

(1) the total taxable amount of the lump sum distribution for the taxable year, over

(2) the minimum distribution allowance.

(b) Minimum distribution allowance. For purposes of this section, the minimum distribution allowance shall be that which is calculated according to subparagraph (C) of paragraph one of subsection (e) of section four hundred two of the internal revenue code.

(c) Multiple distributions and distributions of annuity contracts. For purposes of this section, the rules concerning multiple distributions and distributions of annuity contracts as specified by paragraph two of subsection (e) of section four hundred two of the internal revenue code

shall be applicable, except that references to "paragraph (1) (A)" shall be deemed to be references to this section, and except that only lump sum distributions (or portions thereof) and distributions of annuity contracts subject to tax under this article shall be included, and except that references to the secretary shall be deemed to be references to the tax commission.

(d) Definitions and special rules. For purposes of this section, the following provisions shall apply, to the extent applicable to the taxpayer's federal tax on lump sum distributions: (1) the definitions and special rules as specified in paragraph four of subsection (e) of section four hundred two of the internal revenue code; and (2) the special rules relating to (A) individuals who have attained the age of fifty before January first, nineteen hundred eighty-six and (B) capital gains, as specified in paragraphs three, four, five and six of subsection (h) of section eleven hundred twenty-two of the tax reform act of nineteen hundred eighty-six as enacted by public law 99-514, but (i) in the event that paragraph three of such subsection is applicable, clause (ii) of subparagraph (B) of such paragraph shall be applied using a rate of five and four-tenths percent, and (ii) in the event that paragraph five of such subsection is applicable, the words "five" and "one-fifth" in subsection (a) of this section shall be read as "ten" and "one-tenth", respectively, and subsection (a) of this section shall be applied by using the rate of tax specified in subsection (f) of section six hundred two as such subsection was in effect for taxable years beginning in nineteen hundred eighty-six.

§ 625. Gift for fish and wildlife management. Effective for any tax year commencing on or after January first, nineteen hundred eighty-two, an individual in any taxable year may elect to contribute to the conservation fund for fish and wildlife management purposes. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The tax commission shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the conservation fund and used only for those purposes enumerated in

section eighty-three of the state finance law.

§ 625-a. Gifts to food banks. Effective for any taxable year commencing on or after January first, two thousand nineteen, an individual in any taxable year may elect to contribute to the state gifts to food banks fund for financial support for regional food banks. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the gifts to food banks fund and used only for those purposes enumerated in section eighty-two of the state finance law.

§ 626. The United States Olympic Committee/Lake Placid Olympic Training Center Fund. Effective for any taxable year commencing on or after the first day of January next succeeding the effective date of this section, an individual in any taxable year may elect to contribute an amount of two dollars to the United States Olympic Committee/Lake Placid Olympic Training Center Fund. Such contribution shall not reduce the amount of state tax owed by such individual. The commissioner shall include a space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law to the contrary, all revenues collected pursuant to this section shall be credited to the United States Olympic Committee/Lake Placid Olympic Training Center Fund and used only for those purposes enumerated in section eighty-four of the state finance law.

§ 626-a. Gift for home delivered meals for seniors. Effective for any tax year commencing on or after January first, two thousand nineteen, an individual in any taxable year may elect to contribute to the support of the senior wellness in nutrition fund for the purpose of providing home delivered meals to seniors. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such

individual. The commissioner shall include space on the personal income tax return, entitled "Home Delivered Meals for Seniors", to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the senior wellness in nutrition fund and used only for the purposes enumerated in section ninety-one-g of the state finance law.

§ 627. Gift for breast cancer research and education. Effective for any tax year commencing on or after January first, nineteen hundred ninety-six, an individual in any taxable year may elect to contribute to the breast cancer research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the breast cancer research and education fund and used only for those purposes enumerated in section ninety-seven-yy of the state finance law.

§ 627-a. Gift for honor and remembrance of veterans. Effective for any tax year commencing on or after January first, two thousand thirteen, an individual in any taxable year may elect to contribute to the veterans remembrance and cemetery maintenance and operation fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the veterans remembrance and cemetery maintenance and operation fund and used only for those purposes enumerated in section ninety-seven-mmmm of the state finance law.

§ 627-b. Gift for assisting homeless veterans. Effective for any tax year commencing on or after January first, two thousand fifteen, an

individual in any taxable year may elect to contribute to the homeless veterans assistance fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution.

Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the homeless veterans assistance fund and used only for those purposes enumerated in section ninety-nine-v of the state finance law.

§ 627-c. Gift for New York state veterans' homes. Effective for any tax year commencing on or after January first, two thousand seventeen, an individual in any taxable year may elect to contribute to the veterans' home assistance fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution.

Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the veterans' home assistance fund and used only for those purposes enumerated in section eighty-one of the state finance law.

§ 628. Gift for missing and exploited children clearinghouse fund. Effective for any tax year commencing on or after January first, nineteen hundred ninety-seven, an individual in any taxable year may elect to contribute to the missing and exploited children clearinghouse fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return form to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be paid to the missing and exploited children clearinghouse fund established pursuant to and used only for those purposes enumerated in section ninety-two-w of the state finance law.

§ 629. Gift for Alzheimer's disease support services. Effective for any tax year commencing on or after January first, two thousand, an individual in any taxable year may elect to contribute to the Alzheimer's disease assistance fund for support services for people with Alzheimer's disease and their families. The contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the Alzheimer's disease assistance fund and used only for those purposes enumerated in section eighty-nine-e of the state finance law.

§ 629-a. Gift for eliminating the stigma relating to mental illness. Effective for any tax year commencing on or after January first, two thousand fifteen, an individual in any taxable year may elect to contribute to the mental illness anti-stigma fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenue collected pursuant to this section shall be credited to the mental illness anti-stigma fund and used only for those purposes enumerated in section ninety-five-h of the state finance law.

§ 629-b. Gift for substance use disorder education and recovery. Effective for any tax year commencing on or after January first, two thousand twenty-one, an individual in any taxable year may elect to contribute to the substance use disorder education and recovery fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited

to the substance use disorder education and recovery fund and used only for those purposes enumerated in section eighty-nine-j of the state finance law.

§ 630. Gift for prostate and testicular cancer research and education.

Effective for any tax year commencing on or after January first, two thousand four, an individual in any taxable year may elect to contribute to the New York State prostate and testicular cancer research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the New York State prostate and testicular cancer research and education fund and used only for those purposes enumerated in section ninety-five-e of the state finance law.

§ 630-a. Gift for World Trade Center memorial foundation.

Effective for any tax year commencing on or after January first, two thousand five, a taxpayer in any taxable year may elect to contribute to the support of the World Trade Center memorial foundation fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the World Trade Center memorial foundation fund and shall be used only for those purposes enumerated in section seventy-nine of the state finance law.

§ 630-b. Gift for volunteer firefighting and volunteer emergency

services fund. An individual in any taxable year may elect to contribute to the volunteer firefighting and volunteer emergency services fund for the recruitment and retention of volunteer firefighters and volunteer

emergency services personnel. The contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution.

Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the volunteer firefighting and volunteer emergency services recruitment and retention fund and used only for those purposes enumerated in section ninety-nine-q of the state finance law.

§ 630-c. Gift for New York state teen health education fund. An individual in any taxable year may elect to contribute to the teen health education fund for educational programs in schools related to health. The contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the New York state teen health education fund and used only for those purposes enumerated in section ninety-nine-u of the state finance law.

*** § 630-d. Gift for women's cancers education and prevention.** An individual in any taxable year may elect to contribute to the women's cancers education and prevention fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the women's cancers education and prevention fund and used only for those purposes enumerated in section ninety-seven-llll of the state finance law.

* NB There are 2 § 630-d's

*** § 630-d. Gift for autism awareness and research.** Effective for any tax year commencing on or after January first, two thousand sixteen, an individual in any taxable year may elect to contribute to the New York state autism awareness and research fund for autism awareness projects and autism research projects. The contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution.

Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the New York state autism awareness and research fund and used only for those purposes enumerated in section ninety-five-e of the state finance law, as added by chapter three hundred one of the laws of two thousand four.

* NB There are 2 § 630-d's

§ 630-e. Gift to the love your library fund. Effective for any tax year commencing on or after January first, two thousand eighteen, an individual in any taxable year may elect to contribute to the love your library fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the love your library fund and used only for those purposes enumerated in section ninety-nine-l of the state finance law, as added by chapter three hundred three of the laws of two thousand four.

*** § 630-f. Gift for organ and tissue donation outreach and research.** Effective for any tax year commencing on or after January first, two thousand nineteen, an individual in any taxable year may elect to contribute to the life pass it on trust fund. The contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such

contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the life pass it on trust fund and used only for those purposes enumerated in section ninety-five-d of the state finance law, as added by chapter four hundred fifteen of the laws of two thousand three.

* NB There are 6 § 630-f's

*** § 630-f. Gift for ALS research and education.** Effective for any tax year commencing on or after January first, two thousand nineteen, an individual in any taxable year may elect to contribute to the New York state ALS (Amyotrophic Lateral Sclerosis) research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the New York state ALS research and education fund and used only for those purposes enumerated in section ninety-five-i of the state finance law.

* NB There are 6 § 630-f's

*** § 630-f. Gift for school-based health centers.** Effective for any tax year commencing on or after January first, two thousand nineteen, an individual in any taxable year may elect to contribute to the school-based health centers fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. The commissioner shall also ensure that a description of a school-based health center is included within the tax form preparation instruction booklet. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the school-based health centers fund and used only for those purposes enumerated in section ninety-nine-bb of the state finance law.

* NB There are 6 § 630-f's

*** § 630-f. Gift for lupus education and prevention.** An individual in any taxable year may elect to contribute to the lupus education and prevention fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the lupus education and prevention fund and used only for those purposes enumerated in section ninety-seven-rrrr of the state finance law.

* NB There are 6 § 630-f's

*** § 630-f. Gift for military families.** Effective for any tax year commencing on or after January first, two thousand eighteen, an individual in any taxable year may elect to contribute to the military family relief fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the military family relief fund and used only for those purposes enumerated in section eighty-nine-i of the state finance law.

* NB There are 6 630-f's

*** § 630-f. Gift for city university of New York.** An individual in any taxable year may elect to contribute to the city university of New York. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the city university construction fund and used only for the purposes

enumerated in section sixty-two hundred seventy-three of the education law.

* NB There are 6 § 630-f's

*** § 630-g. Gift for leukemia, lymphoma and myeloma research, education and treatment.** Effective for any tax year commencing on or after January first, two thousand twenty, an individual in any taxable year may elect to contribute to the leukemia, lymphoma and myeloma research, education and treatment fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the leukemia, lymphoma and myeloma research, education and treatment fund and used only for those purposes enumerated in section ninety-seven-ssss of the state finance law.

* NB There are 3 § 630-g's

*** § 630-g. Gift for the William B. Hoyt Memorial children and family trust fund.** Effective for any tax year commencing on or after January first, two thousand twenty-one, an individual in any taxable year may elect to contribute to the William B. Hoyt Memorial children and family trust fund established pursuant to section four hundred eighty-one-f of the social services law. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The tax commission shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the William B. Hoyt Memorial children and family trust fund and used only for those purposes enumerated in article ten-A of the social services law.

* NB There are 3 § 630-g's

*** § 630-g. Gift to the arts fund.** Effective for any tax year commencing on or after January first, two thousand nineteen, an individual may elect to contribute to the arts fund created pursuant to section ninety-seven-yyy of the state finance law for the support of the New York state council on the arts. Such contribution shall be in any whole dollar amount and shall not reduce the amount of tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenue collected pursuant to this section shall be credited to the arts fund established by section ninety-seven-yyy of the state finance law and used only for the purposes of the New York state council on the arts.

* NB There are 3 § 630-g's

§ 630-h. New York state campaign finance fund check-off. (a) For each taxable year beginning on and after January first, two thousand twenty, every resident taxpayer whose New York state income tax liability for the taxable year for which the return is filed is forty dollars or more may designate on such return that forty dollars be paid into the New York state campaign finance fund established by section ninety-two-t of the state finance law. Where a husband and wife file a joint return and have a New York state income tax liability for the taxable year for which the return is filed is eighty dollars or more, or file separate returns on a single form, each such taxpayer may make separate designations on such return of forty dollars to be paid into the New York state campaign finance fund. The contribution shall not reduce the amount of state tax owed by such taxpayer.

(b) Notwithstanding any other provision of law, all revenue contributed pursuant to this section shall be credited to the New York state campaign finance fund, established pursuant to section ninety-two-t of the state finance law.

(c) The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution for a tax year beginning on or after January first, two thousand twenty.

*** § 630-i. Gifts for the state library system.** Effective for any tax year commencing on or after January first, two thousand twenty-two, an individual in any taxable year may elect to contribute to the state library aid program for financial support for public libraries and library systems, reference and research library resource systems, the New York public research libraries, the Schomburg collection and the library for the blind and visually handicapped, or for any other library, library system or purpose enumerated in section two hundred seventy-three of the education law. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the state library aid program and shall be used in addition to, not to supplant, existing funding under the state library aid program and used for only those purposes enumerated in section two hundred seventy-three of the education law.

* NB There are 3 § 630-i's

*** § 630-i. Gift for the firearm violence research fund.** Effective for any tax year commencing on or after January first, two thousand twenty-one, a taxpayer in any taxable year may elect to contribute to the firearm violence research fund established pursuant to section ninety-seven-j of the state finance law. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such taxpayer. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the firearm violence research fund and used only for those purposes enumerated in section ninety-seven-j of the state finance law.

* NB There are 3 § 630-i's

*** § 630-i. Gifts for thoroughbred aftercare.** Effective for any tax

year commencing on or after the effective date of this section, a taxpayer in any taxable year may elect to contribute to the New York state thoroughbred breeding and development fund established pursuant to section two hundred fifty-two of the racing, pari-mutuel wagering and breeding law, for the purpose of funding the operation of retired race horse aftercare facilities. Any contributions made to the thoroughbred breeding and development fund pursuant to this section shall be deposited into a dedicated account managed by the fund, which shall solely be used for funding the operation of retired race horse aftercare facilities, with a preference for those organizations that are accredited horse retirement and rescue programs. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the New York state thoroughbred retirement race horse and aftercare fund and shall be used only for those purposes enumerated in paragraph h of subdivision two of section two hundred fifty-four of the racing, pari-mutuel wagering and breeding law.

* NB There are 3 § 630-i's

§ 630-j. Gifts for standardbred aftercare. Effective for any tax year commencing on or after the effective date of this section, a taxpayer in any taxable year may elect to contribute to the agriculture and New York horse breeding and development fund established pursuant to section three hundred thirty of the racing, pari-mutuel wagering and breeding law, for the purpose of funding the operation of retired race horse aftercare facilities. Any contributions made to the agriculture and New York horse breeding and development fund pursuant to this section shall be deposited into a dedicated account managed by the fund, which shall be solely used for funding the operation of retired race horse aftercare facilities, with preference for those organizations that are accredited horse retirement and rescue programs. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the

personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the New York state standardbred retirement race horse and aftercare fund and shall be used only for those purposes enumerated in paragraph j of subdivision one of section three hundred thirty-two of the racing, pari-mutuel wagering and breeding law.

§ 630-k. Gift for Lyme and tick-borne diseases education, research and prevention. Effective for any tax year commencing on or after January first, two thousand twenty-two, an individual in any taxable year may elect to contribute to the support of the Lyme and tick-borne diseases education, research and prevention fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the Lyme and tick-borne diseases education, research and prevention fund and used only for the purposes enumerated in section ninety-five-k of the state finance law.

*** § 630-l. Gift for diabetes research and education.** Effective for any tax year commencing on or after the effective date of this section, an individual in any taxable year may elect to contribute to the diabetes research and education fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law all revenues collected pursuant to this section shall be credited to the diabetes research and education fund and used only for those purposes enumerated in section eighty-nine-k of the state finance law.

* NB There are 2 § 630-l's

* **§ 630-1. Gift for cure childhood cancer research fund.** Effective for any tax year commencing on or after January first, two thousand twenty-four, a taxpayer in any taxable year may elect to contribute to the cure childhood cancer research fund established pursuant to section ninety-nine-z of the state finance law. Such contribution shall be in any whole dollar amount and shall not reduce the amount of state tax owed by such taxpayer. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the cure childhood cancer research fund and used only for those purposes enumerated in section ninety-nine-z of the state finance law.

* NB There are 2 § 630-1's

PART III-NONRESIDENTS AND PART-YEAR RESIDENTS

- 631. New York source income of a nonresident individual.
- 632. Nonresident partners and electing shareholders of S corporations.
- 632-a. Personal service corporations and S corporations formed or availed of to avoid or evade New York State income tax.
- 633. New York source income of a nonresident estate or trust.
- 634. Share of a nonresident beneficiary in income from New York sources.
- 635. Credit to trust beneficiary receiving accumulation distribution.
- 637. Computation of separate tax on the ordinary income portion of lump sum distributions received by nonresident or part-year resident individuals, estates and trusts.
- 638. New York source income of a part-year resident.
- 639. Accruals upon change of residence.

§ 631. New York source income of a nonresident individual. (a)

General. The New York source income of a nonresident individual shall be the sum of the following: (1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable

year, derived from or connected with New York sources, including: (A) his distributive share of partnership income, gain, loss and deduction, determined under section six hundred thirty-two, and

(B) his pro rata share of New York S corporation income, loss and deduction, increased by reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, determined under section six hundred thirty-two, and

(C) his share of estate or trust income, gain, loss and deduction, determined under section six hundred thirty-four and

(2) The portion of the modifications described in subsections (b) and (c) of section six hundred twelve which relate to income derived from New York sources (including any modifications attributable to him as a partner or shareholder of a New York S corporation).

(b) Income and deductions from New York sources.

(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

(A) the ownership of any interest in real or tangible personal property in this state; or

(1) For purposes of this subparagraph, the term "real property located in this state" includes an interest in a partnership, limited liability corporation, S corporation, or non-publicly traded C corporation with one hundred or fewer shareholders (hereinafter the "entity") that owns real property that is located in New York or owns shares of stock in a cooperative housing corporation where the cooperative units relating to the shares are located in New York; provided, that the sum of the fair market values of such real property, cooperative shares, and related cooperative units equals or exceeds fifty percent of all the assets of the entity on the date of sale or exchange of the taxpayer's interest in the entity. Only those assets that the entity owned for at least two years before the date of the sale or exchange of the taxpayer's interest in the entity are to be used in determining the fair market value of all the assets of the entity on the date of sale or exchange. The gain or loss derived from New York sources from the taxpayer's sale or exchange of an interest in an entity that is subject to the provisions of this subparagraph is the total gain or loss for federal income tax purposes from that sale or exchange multiplied by a fraction, the numerator of

which is the fair market value of the real property, and the cooperative housing corporation stock and related cooperative units located in New York on the date of sale or exchange and the denominator of which is the fair market value of all the assets of the entity on the date of sale or exchange.

(B) a business, trade, profession or occupation carried on in this state; or

(C) in the case of a shareholder of an S corporation where the election provided for in subsection (a) of section six hundred sixty of this article is in effect, the ownership of shares issued by such corporation, to the extent determined under section six hundred thirty-two of this article; or

(D) winnings from a wager placed in a lottery conducted by the division of the lottery, if the proceeds from such wager exceed five thousand dollars; or

(D-1) gambling winnings in excess of five thousand dollars from wagering transactions within the state; or

(E) gains from the sale, conveyance or other disposition of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof and subject to the provisions of article thirty-one of this chapter, whether such shares are held by a partnership, trust or otherwise; or

(E-1) in the case of an S corporation for which an election is in effect pursuant to subsection (a) of section six hundred sixty of this article that terminates its taxable status in New York, any income or gain recognized on the receipt of payments from an installment sale contract entered into when the S corporation was subject to tax in New York, allocated in a manner consistent with the applicable methods and rules for allocation under article nine-A or thirty-two of this chapter, in the year that the S corporation sold its assets.

(F) income received by nonresidents related to a business, trade, profession or occupation previously carried on in this state, whether or not as an employee, including but not limited to, covenants not to compete and termination agreements. Income received by nonresidents related to a business, trade, profession or occupation previously carried on partly within and partly without the state shall be allocated in accordance with the provisions of subsection (c) of this section.

(2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state or from winnings from a wager placed in a lottery conducted by the division of the lottery, if the proceeds from such wager exceed five thousand dollars. Income from the disposition of intangible personal property shall also constitute income derived from New York sources to the extent such gains are from the sale, conveyance or other disposition of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof and subject to the provisions of article thirty-one of this chapter, whether such shares are held by a partnership, trust or otherwise.

(3) Income directly or indirectly derived by an athlete, entertainer, or performing artist from closed-circuit and cable television transmissions of an event (other than events occurring on a regularly scheduled basis) taking place within the state as a result of the rendition of services by such athlete, entertainer or performing artist shall constitute income derived from New York sources only to the extent that such transmissions were received or exhibited within the state.

(4) Deductions with respect to capital losses, passive activity losses and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with New York sources, under regulations of the commissioner of taxation and finance, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(5) In the case of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes, shall not constitute income, gain, loss or deduction derived from New York sources.

(6) The deduction allowed by section two hundred fifteen of the

internal revenue code, relating to alimony, shall not constitute a deduction derived from New York sources.

(c) Income and deductions partly from New York sources. If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the tax commission, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations.

(d) Purchase and sale for own account.-- A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property or the purchase, sale or writing of stock option contracts, or both, for his own account.

(e) Military pay. Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from New York sources.

(f) Husband and wife. If husband and wife determine their federal income tax on a joint return but are required to determine their New York income taxes separately, they shall determine their New York source incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Stock option grants, stock appreciation rights and restricted stock. A nonresident taxpayer who has been granted statutory stock options, restricted stock, nonstatutory stock options or stock appreciation rights and who, during such grant period, performs services within New York for, or is employed within New York by, the corporation granting such option, stock or right, shall compute his or her New York source income as determined under rules and regulations prescribed by the commissioner.

§ 632. Nonresident partners and electing shareholders of S corporations. (a) Portion derived from New York sources.

(1) In determining New York source income of a nonresident partner of any partnership, there shall be included only the portion derived from

or connected with New York sources of such partner's distributive share of items of partnership income, gain, loss and deduction entering into his federal adjusted gross income, as such portion shall be determined under regulations of the tax commission consistent with the applicable rules of section six hundred thirty-one of this part. If a nonresident is a partner in a partnership where a sale or transfer of the membership interest of the partner is subject to the provisions of section one-thousand sixty of the internal revenue code, then any gain recognized on the sale or transfer for federal income tax purposes shall be treated as New York source income allocated in a manner consistent with the applicable methods and rules for allocation under this article in the year that the assets were sold or transferred.

(2) In determining New York source income of a nonresident shareholder of an S corporation where the election provided for in subsection (a) of section six hundred sixty of this article is in effect, there shall be included only the portion derived from or connected with New York sources of such shareholder's pro rata share of items of S corporation income, loss and deduction entering into his federal adjusted gross income, increased by reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, as such portion shall be determined under regulations of the commissioner consistent with the applicable methods and rules for allocation under article nine-A of this chapter, regardless of whether or not such item or reduction is included in entire net income under article nine-A for the tax year. If a nonresident is a shareholder in an S corporation where the election provided for in subsection (a) of section six hundred sixty of this article is in effect, and the S corporation has distributed an installment obligation under section 453(h)(1)(A) of the Internal Revenue Code, then any gain recognized on the receipt of payments from the installment obligation for federal income tax purposes will be treated as New York source income allocated in a manner consistent with the applicable methods and rules for allocation under article nine-A of this chapter in the year that the assets were sold. In addition, if the shareholders of the S corporation have made an election under section 338(h)(10) of the Internal Revenue Code, then any gain recognized on the deemed asset sale for federal income tax purposes will be treated as New

York source income allocated in a manner consistent with the applicable methods and rules for allocation under article nine-A of this chapter in the year that the shareholder made the section 338(h)(10) election. For purposes of a section 338(h)(10) election, when a nonresident shareholder exchanges his or her S corporation stock as part of the deemed liquidation, any gain or loss recognized shall be treated as the disposition of an intangible asset and will not increase or offset any gain recognized on the deemed assets sale as a result of the section 338(h)(10) election.

(b) Special rules as to New York sources. In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which--

(1) characterizes payments to the partner as being for services or for the use of capital, or

(2) allocates to the partner, as income or gain from sources outside New York, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside New York to partnership income or gain from all sources, except as authorized in subsection (d), or

(3) allocates to the partner a greater proportion of a partnership item of loss or deduction connected with New York sources than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (d).

(c) Partner's and shareholder's modifications. Any modification described in subsection (b) or (c) of section six hundred twelve, which relates to an item of partnership or S corporation income, gain, loss or deduction, shall be made in accordance with the partner's distributive share or the shareholder's pro rata share for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with New York sources.

(d) Alternate methods. The tax commission may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with New York sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as it may require.

(e) Application of rules for resident partners and shareholders to nonresident partners and shareholders.

(1) A nonresident partner's distributive share or S corporation shareholder's pro rata share of items shall be determined under subsection (a) of section six hundred seventeen.

(2) The character of partnership or corporation items for a nonresident partner or S corporation shareholder shall be determined under subsection (b) of section six hundred seventeen.

(3) The effect of a special provision in a partnership agreement (other than a provision referred to in subsection (b) of this section) having the principal purpose of avoidance or evasion of tax under this article shall be determined under subsection (c) of section six hundred seventeen.

§ 632-a. Personal service corporations and S corporations formed or availed of to avoid or evade New York State income tax. (a) General. If (1) substantially all of the services of a personal service corporation or S corporation are performed for or on behalf of another corporation, partnership, or other entity and (2) the effect of forming or availing of such personal service corporation or S corporation is the avoidance or evasion of New York income tax by reducing the income of, or in the case of a nonresident, reducing the New York source income of, or securing the benefit of any expense, deduction, credit, exclusion, or other allowance for, any employee-owner which would not otherwise be available, then the commissioner may allocate all income, deductions, credits, exclusions, and other allowances between such personal service corporation or S corporation (even if such personal service corporation or S corporation is taxed under article nine-A of this chapter or is not subject to tax in this state) and its employee-owners, provided such allocation is necessary to prevent avoidance or evasion of New York state income tax or to clearly reflect the source and the amount of the income of the personal service corporation or S corporation or any of its employee-owners.

(b) Definitions for purposes of this section. (1) The term "personal service corporation" means a corporation whose principal activity is the performance of personal services and such services are substantially

performed by the employee-owners of such corporation.

(2) The term "S corporation" means a corporation for which an election under section 1362 of the internal revenue code is in effect for such taxable year and whose principal activity is the performance of personal services and such services are substantially performed by the employee-owners of such corporation.

(3) The term "employee-owner" means any employee who owns, on any given day during the taxable year, more than ten percent of the outstanding stock of the personal service corporation or S corporation. For purposes of the preceding sentence, the constructive ownership of stock rules set forth in section 318 of the internal revenue code shall apply, except that "5 percent" shall be substituted for "50 percent" in section 318(a)(2)(C) of the internal revenue code.

(4) All related persons (within the meaning of section 144(a)(3) of the internal revenue code) shall be treated as one entity.

§ 633. New York source income of a nonresident estate or trust. (a) General. The New York source income of a nonresident estate or trust shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction entering into federal adjusted gross income, as determined under paragraph four of subsection (e) of section six hundred one, derived from or connected with New York sources. Such determination of source shall be made in accordance with the applicable rules of section six hundred thirty-one as in the case of a nonresident individual.

(2) The portion of the modifications described in section six hundred eighteen which relate to income derived from New York sources other than that portion of the modification provided in subsection three thereof which relates to section six hundred fifteen.

(b) Special New York source rules. Deductions with respect to capital losses, passive activity losses and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with New York sources, under regulations of the tax commission, but otherwise determined in the same manner as the corresponding federal deductions.

§ 634. Share of a nonresident beneficiary in income from New York sources. (a) General. The share of a nonresident beneficiary of any estate or trust under subsection (a) of section six hundred thirty-one, in estate or trust income, gain, loss and deduction from New York sources shall be determined as follows:

(1) Items of distributable net income from New York sources. There shall be determined the items of income, gain, loss and deduction, derived from or connected with New York sources, which enter into the definition of federal distributable net income of the estate or trust for the taxable year (including such items from another estate or trust of which the first estate or trust is a beneficiary). Such determination of source shall be made in accordance with the applicable rules of section six hundred thirty-one as in the case of a nonresident individual.

(2) Addition or subtraction of modifications. There shall be added or subtracted (as the case may be) the modifications described in section six hundred eighteen, to the extent relating to the items of income, gain, loss and deduction derived from or connected with New York sources as determined under paragraph one of this subsection. No modification shall be made under this subsection which has the effect of duplicating an item already reflected in the definition of federal distributable net income.

(3) Allocation among beneficiaries. (A) The amounts determined under paragraphs one and two shall be allocated among the beneficiaries (and including, solely for the purpose of this allocation, among the estate or trust and resident beneficiaries) in proportion to their respective shares of federal distributable net income.

(B) The amounts so allocated shall have the same character under this article as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(b) Alternate methods of determining shares.

(1) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary (including, solely for

the purpose of this allocation, resident beneficiaries) in the net amount determined under paragraphs one and two of subsection (a) shall be in proportion to the beneficiary's share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(2) The commissioner may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from New York sources, and in the modifications related thereto, as may be appropriate and equitable. Such method may be used by the fiduciary in his discretion whenever the allocation of such respective shares under subsection (a) or paragraph one of subsection (b) would result in an inequity which is substantial both in amount and in relation to the total amount of the modifications referred to in paragraph two of subsection (a).

§ 635. Credit to trust beneficiary receiving accumulation distribution. A nonresident or part-year resident beneficiary of a trust whose New York source income includes all or part of an accumulation distribution by such trust, as defined in section six hundred sixty-five of the internal revenue code, shall be allowed a credit against the tax otherwise due under this article, computed in the same manner and subject to the same limitation as provided by section six hundred twenty-one with respect to a resident beneficiary except that such limitation shall be applied as if it also referred to an exclusion from New York source income.

§ 637. Computation of separate tax on the ordinary income portion of lump sum distributions received by nonresident or part-year resident individuals, estates and trusts. (a) General. The tax imposed under section six hundred three for any taxable year, with respect to the ordinary income portion of a lump sum distribution received by a nonresident or part-year resident individual, estate or trust shall be applicable to the ordinary income portion of a lump sum distribution

wholly or partly derived from or connected with New York sources, and the amount of such tax shall be computed in the same manner as that set forth in section six hundred twenty-four, except that if the lump sum distribution was partly derived from or connected with New York sources, the total taxable amount and the ordinary income portion of the lump sum distribution referred to in such section shall be determined by apportionment and allocation, pursuant to regulations promulgated by the state tax commission.

(b) Special rule for part-year residents. In the case of a part-year resident, the ordinary income portion of a lump sum distribution wholly or partly derived from or connected with New York sources shall be the sum of:

(1) The ordinary income portion of a lump sum distribution for the period of residence, computed as if the taxable year for federal income tax purposes were limited to the period of residence.

(2) The ordinary income portion of a lump sum distribution for the period of nonresidence, determined in accordance with subsection (a) of this section, computed as if the taxable year for federal income tax purposes were limited to the period of nonresidence.

§ 638. New York source income of a part-year resident. (a)

Individuals. The New York source income of a part-year resident individual shall be the sum of the following:

(1) New York adjusted gross income for the period of residence, determined in accordance with part II of this article as if the taxpayer's taxable year for federal income tax purposes were limited to the period of residence.

(2) New York source income for the period of nonresidence, determined in accordance with section six hundred thirty-one as if the taxpayer's taxable year for federal income tax purposes were limited to the period of nonresidence.

(b) Trusts. The New York source income of a part-year resident trust shall be the sum of the following:

(1) New York adjusted gross income for the period of residence, determined in accordance with paragraph four of subsection (e) of section six hundred one as if its taxable year for federal income tax

purposes were limited to the period of residence.

(2) New York source income for the period of nonresidence, determined in accordance with section six hundred thirty-three as if its taxable year for federal income tax purposes were limited to the period of nonresidence.

(c) Stock option grants, stock appreciation rights and restricted stock. A part-year resident taxpayer who has been granted statutory stock options, restricted stock, nonstatutory stock options or stock appreciation rights and who, during such grant period, performs services within New York for, or is employed within New York by, the corporation granting such option, stock or right, shall compute his or her New York source income as determined under rules and regulations prescribed by the commissioner.

§ 639. Accruals upon change of residence. (a) If an individual changes status from resident to nonresident he shall, regardless of his method of accounting, accrue to the period of residence any items of income, gain, loss, deduction, or ordinary income portion of a lump sum distribution accruing prior to the change of status, with the applicable modifications and adjustments to federal adjusted gross income and itemized deductions under sections six hundred twelve and six hundred fifteen, if not otherwise properly includible or allowable for New York income tax purposes for such period or a prior taxable year under his method of accounting.

(b) If an individual changes status from nonresident to resident he shall, regardless of his method of accounting, accrue to the period of nonresidence any items of income, gain, loss or deduction, or ordinary income portion of a lump sum distribution accruing prior to the change of status, with the applicable modifications and adjustments to federal adjusted gross income and itemized deductions under sections six hundred twelve and six hundred fifteen, other than items derived from or connected with New York sources, if not otherwise properly includible or allowable for New York income tax purposes for such period or for a prior taxable year under his method of accounting.

(c) No item of income, gain, loss, deduction, ordinary income portion of a lump sum distribution or modification or adjustment which is

accrued under this section shall be taken into account in determining the tax under this article for any subsequent taxable year.

(d) The accruals under this section shall not be required if the individual files with the commissioner a bond or other security acceptable to the commissioner, on condition that the amounts accruable under this section are taken into account in determining the tax under this article for one or more subsequent taxable years as if the individual had not changed his resident status.

(e) The foregoing provisions of this section shall apply if an individual changes his or her status from a resident to nonresident or from a nonresident to resident during a taxable year, or at the beginning of a taxable year, as a result of a change of domicile or as a result of becoming a resident or nonresident based on the definition contained in subsection (b) of section six hundred five of this article.

(f) Except as hereinafter provided, where an individual who is a member of a partnership or a shareholder of an S corporation changes status from resident to nonresident, or from nonresident to resident, the portion of the distributive or pro rata share of income, gain and loss (less deductions attributable thereto) from a partnership or S corporation shall be allocated to the resident and nonresident periods of the partner or shareholder on a proportionate basis throughout the taxable year of the partnership or S corporation. In such event, the portion of the distributive or pro rata share allocated to the period of residency shall be determined based on the number of days of residency within the reporting period of the partnership or S corporation over the total number of days in the reporting period of the partnership or S corporation. Provided, however, that the commissioner may require, or the individual may elect, to accrue to the period of residence, and the period of nonresidence, the portion of the distributive or pro rata share of partnership or S corporation income, gain and loss (less deductions attributable thereto) accruing during the individual's respective resident and nonresident periods in a manner that reflects the date of accrual of said income, gain and loss by the partnership or S corporation.

(g) Except as hereinafter provided, where an individual who is beneficiary of an estate or trust changes status from resident to nonresident, or from nonresident to resident, the portion of any estate

or trust income credited, distributable, payable or required to be distributed to such beneficiary shall be allocated to the resident and nonresident periods of the beneficiary on a proportionate basis throughout the taxable year of the estate or trust. In such event, the portion of such estate or trust income allocated to the period of residency shall be determined based on the number of days of residency within the reporting period of the estate or trust. Provided, however, that the commissioner may require, or the beneficiary may elect, to accrue to the period of residence, and the period of nonresidence, the portion of such estate or trust income accruing during the beneficiary's respective resident and nonresident periods in a manner that reflects the date of accrual of said estate or trust income by the estate or trust.

(h) If a trust changes its status from resident to nonresident or from nonresident to resident, the provisions of subsections (a) through (f) of this section shall apply except that the term "individual" shall be read as "trust" and reference to "modifications" shall mean those modifications described in section six hundred eighteen.

PART IV-RETURNS AND PAYMENT OF TAX

- Section 651. Returns and liabilities.
652. Time and place for filing returns and paying tax.
653. Signing of returns and other documents.
654. Relief from joint and several liability on joint return.
657. Extensions of time.
658. Requirements concerning returns, notices, records and statements.
659. Report of federal changes, corrections or disallowances.
- 659-a. Reporting of federal partnership adjustments.
660. Election by shareholders of S corporations.
661. Change of election.
662. Computation of tax where taxpayer restores substantial amount held under claim of right.
663. Estimated tax on sale or transfer of real property by nonresident.

§ 651. Returns and liabilities. (a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, an income tax return under this article shall be made and filed by or for:

(1) every resident individual (A) required to file a federal income tax return for the taxable year, or (B) having federal adjusted gross income for the taxable year, increased by the modifications under subsection (b) of section six hundred twelve, in excess of four thousand dollars, or in excess of his New York standard deduction, if lower, or (C) having received during the taxable year a lump sum distribution any portion of which is subject to tax under section six hundred three;

(2) every resident estate or trust required to file a federal income tax return for the taxable year, or having any New York taxable income for the taxable year, determined under section six hundred eighteen, or having received during the taxable year a lump sum distribution any portion of which is subject to tax under section six hundred three;

(3) every nonresident or part-year resident individual having New York source income for the taxable year, determined under part III of this article, and having New York adjusted gross income for the taxable year, determined under part II of this article, in excess of the taxpayer's New York standard deduction, or having received during the taxable year a lump sum distribution any portion of which is subject to tax under section six hundred three; and

(4) every nonresident estate or trust or part-year resident trust having New York source income for the taxable year, determined under part III of this article, and having New York adjusted gross income for the taxable year, determined under paragraph four of subsection (e) of section six hundred one, or having received during the taxable year a lump sum distribution any portion of which is subject to tax under section six hundred three.

(b) Husband and wife.

(1) If the federal income tax liability of husband or wife is determined on a separate federal return, their New York income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife (other than a husband and wife described in paragraph four of this subsection)

are determined on a joint federal return, they shall file a joint New York income tax return, and their tax liabilities shall be joint and several except as provided in paragraph six of this subsection, section six hundred fifty-four and subsection (e) of section six hundred eighty-five.

(3) If neither husband or wife files a federal return:

(A) they shall file a joint New York income tax return, and their tax liabilities shall be joint and several except as provided in paragraph six of this subsection, section six hundred fifty-four and subsection (e) of section six hundred eighty-five, or

(B) they may, if both so elect, file separate New York income tax returns, in which event their tax liabilities shall be separate.

(4) If either husband or wife is a resident and the other is a nonresident or part-year resident, they shall file separate New York income tax returns, in which event their tax liabilities shall be separate, unless such husband and wife determine their federal taxable income jointly and both elect to determine their joint New York taxable income as if both were residents, in which event their tax liabilities shall be joint and several except as provided in paragraph six of this subsection, section six hundred fifty-four and subsection (e) of section six hundred eighty-five.

(6) If a joint return has been made under this subsection for a taxable year and only one spouse is liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or an amount of a default in repayment of a guaranteed student, state university or city university loan of which the commissioner of taxation and finance has been notified pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f, or one hundred seventy-one-l of this chapter, as the case may be, then an overpayment and interest thereon shall be credited against such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan, unless the spouse not liable for such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city

university loan demands on a declaration made in accordance with regulations or instructions prescribed by the commissioner of taxation and finance, that the portion of the overpayment and interest attributable to such spouse not be credited against the past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan owed by the other spouse. Such demand may be filed (A) with the return of the spouse not liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or default in repayment of a guaranteed student, state university, or city university loan or (B) with the commissioner of taxation and finance within ten days after notification is provided such spouse by the commissioner of taxation and finance pursuant to subdivision seven of section one hundred seventy-one-c, subdivision six of section one hundred seventy-one-d, subdivision seven of section one hundred seventy-one-e, subdivision seven of section one hundred seventy-one-f or subdivision six of section one hundred seventy-one-l of this chapter. Upon such demand the commissioner of taxation and finance shall determine the amount of the overpayment attributable to each spouse in accordance with regulations prescribed by the commissioner of taxation and finance and credit only that portion of the overpayment and interest thereon attributable to the spouse liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan against such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan.

(7) The commissioner shall clearly alert married taxpayers, on all appropriate publications and instructions, that their liability for tax will be joint and several if they file joint income tax returns. The commissioner shall include notice of an individual's right to relief from joint and several liability pursuant to section six hundred fifty-four of this article in the disclosure of rights statement required by section three thousand four of this chapter and in any notice regarding collection of tax due with respect to a liability on a

joint return.

(c) Decedents. The return for any deceased individual shall be made and filed by the decedent's executor, administrator, or other person charged with the decedent's property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year. Notwithstanding any provision of law to the contrary, when a return has been filed for a decedent, the commissioner may disclose the decedent's name, address, and the date of death to the director of real property tax services of the county and the assessor of the assessing unit in which the address reported on such return is located.

(d) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, conservator, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Nonresident noncitizens. Notwithstanding the provisions of subsection (a) of this section, the due date for the filing of an income tax return under this article for the taxable year by a nonresident noncitizen individual shall be the date prescribed for the filing of his or her federal income tax return for the taxable year.

(h) Tax a debt. Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the state of New York.

(i) Cross reference. For provisions as to information returns by partnerships, employers and other persons, see section six hundred fifty-eight.

§ 652. Time and place for filing returns and paying tax. (a) Except as provided in subsection (b) of this section, a person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon to the commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The commissioner shall prescribe by regulation the place for filing any return, statement, or other document required pursuant to this article and for payment of any tax.

(b) The commissioner may allow individuals who have income only from wages, salaries, tips and like remuneration for services performed as an employee, interest, dividends and unemployment compensation to elect to have the commissioner compute the tax due. To provide for expeditious and uniform administration of the tax computations which involve numerous variables, the commissioner may further qualify, with regard to period of residency, deductions, credits, exemptions, amount and character of gross income, and any other appropriate factors relative to calculation of tax, those individuals who may elect to have their taxes computed by the commissioner. Any such election shall be made on the form prescribed by the commissioner for this purpose. If a qualified taxpayer elects to have the commissioner compute the tax, the amount determined by the commissioner shall be paid (i) within ten days from the date of the issuance of a notice and demand therefor or (ii) on the date fixed for filing such return (determined without regard to any extension of time for filing), whichever is later.

§ 653. Signing of returns and other documents. (a) General. (1) Any return, statement or other document required to be made pursuant to this article shall be signed in accordance with regulations or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him or her.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document,

shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(1) If a partnership is required to report federal adjustments arising from a partnership level audit or an administrative adjustment request pursuant to section six hundred fifty-nine-a of this part, the partnership's federal partnership representative is the New York partnership representative unless the partnership designates, in a manner determined by the commissioner, that another person shall act on behalf of the partnership.

(2) The New York partnership representative shall have the sole authority to act on behalf of the partnership and its direct and indirect partners shall be bound by these actions.

(c) Certifications. The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this article, including a copy of a federal return, shall constitute a certification by the person making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 654. Relief from joint and several liability on joint return. (a) General. The provisions of section six thousand fifteen of the internal revenue code applicable to the liability of individuals who file joint income tax returns shall apply to the same extent as if such section of such code were contained in and made part of this section, except to the extent that any provision of such section is either inconsistent with or not relevant to this article and except as modified in subsection (b) of this section, or with such other modifications as may be necessary to adapt the language of such provisions to the provisions of this article.

(b) Modifications. Section six thousand fifteen of the internal revenue code shall be read as modified by this subsection.

(1) "Secretary" shall be read as "commissioner".

(2) "Internal revenue service" shall be read as "department of taxation and finance".

(3) "Tax court" shall be read as "division of tax appeals".

(4) In the heading of subsection (a) and in clause (ii) of subparagraph (A) of paragraph three of subsection (c), the phrase

"section 6013(d)(3)" shall be read as "paragraphs two, three and four of subsection (b) of section six hundred fifty-one of this article".

(5) In paragraph three of subsection (b), the phrase "section 6662(d)(2)(A)" shall be read as "subsection (p) of section six hundred eighty-five of this article".

(6) In subparagraph (B) of paragraph two of subsection (d), the phrase "section 1 or 55" shall be read as "section six hundred one of this article".

(7) In clause (i) of subparagraph (B) of paragraph one of subsection (e), the phrase "section 6851 or 6861" shall be read as "section six hundred ninety-four of this article" and "section 7485" shall be read as "subsection (c) of section six hundred ninety of this article".

(8) In paragraph two of subsection (e), the phrase "section 6502" shall be read as "section one hundred seventy-four-a of this chapter and section six hundred ninety-two of this article".

(9) In subparagraph (A) of paragraph three of subsection (e), the phrase "section 6512(b), 7121, or 7122" shall be read as "subdivision fifteenth, eighteenth, eighteenth-a or eighteenth-d of section one hundred seventy-one of this chapter and subsection (b) of section six hundred eighty-nine of this article".

(10) The following provisions of such section six thousand fifteen shall be disregarded: (A) The phrase "notwithstanding the provisions of section 7421(a)" contained in clause (ii) of subparagraph (B) of paragraph one of subsection (e); and (B) subparagraph (C) of paragraph three of subsection (e).

(c) Federal determination. If an individual is relieved of a federal income tax liability pursuant to subsection (b) of section six thousand fifteen of the internal revenue code, there shall be a rebuttable presumption that such individual shall also be entitled to equivalent relief from liability under this section, to the extent that such individual has an understatement of tax under this article for the same taxable year that is attributable to the same erroneous item or items to which the individual's federal income tax liability was attributable.

§ 657. Extensions of time. (a) General. The commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any

installment), or for filing any return, statement, or other document required pursuant to this article, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States or who intends to claim nonresident status pursuant to clause (ii) of subparagraph (A) of paragraph one of subsection (b) of section six hundred five, no such extension for filing any return, statement or other document, shall exceed six months.

(b) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the tax commission may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the tax commission may require.

(c) Automatic extension for death of a spouse. An automatic extension of ninety days shall be deemed granted for filing a tax return or paying a tax otherwise required on April fifteenth for individuals whose spouse dies within thirty days prior to such date. No penalties or interest shall be assessed or imposed upon a taxpayer during such extension as granted in this subsection.

§ 658. Requirements concerning returns, notices, records and statements. (a) General. The tax commission may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commission may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the tax commission may deem sufficient to show whether or not such person is liable under this article for tax or for collection of tax. The tax commission shall provide a space on the form of returns wherein the taxpayer shall indicate the school district in which the taxpayer is a resident.

(b) Identifying numbers.--(1) When required by regulations prescribed by the tax commission:

(A) Inclusion in returns.-- Any person required under the authority of this article to make a return, statement, or other document shall include in such return, statement or other document such identifying number as may be prescribed for securing proper identification of such

person.

(B) Furnishing number to other persons.-- Any person with respect to whom a return, statement, or other document is required under the authority of this article to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(C) Furnishing number of another person.-- Any person required under the authority of this article to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(2) Limitation.--

(A) Except as provided in subparagraph (B), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of subparagraphs (B) and (C) of subsection (1) as a return, statement, or other document with respect to another person.

(B) For purposes of subparagraphs (B) and (C) of subsection (1), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(3) Requirement of information.-- For purposes of this section, the tax commission is authorized to require such information as may be necessary to assign an identifying number to any person.

(c) Partnerships, limited liability companies and S corporations.

(1) Partnerships. Every partnership having a resident partner or having any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the commissioner may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year, for taxable years beginning before January first, two thousand sixteen, and on or before the

fifteenth day of the third month following the close of each taxable year, for taxable years beginning on or after January first, two thousand sixteen, except that the due date for the return of a partnership consisting entirely of nonresident noncitizens shall be the date prescribed for the filing of its federal partnership return for the taxable year. For purposes of this paragraph, "taxable year" means a year or a period which would be a taxable year of the partnership if it were subject to tax under this article.

(2) S corporations. Every S corporation for which the election provided for in subsection (a) of section six hundred sixty is in effect shall make a return for the taxable year setting forth all items of income, loss and deduction and such other pertinent information as the commissioner of taxation and finance may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the third month following the close of each taxable year.

(3) Filing fees. (A) Every subchapter K limited liability company, every limited liability company that is a disregarded entity for federal income tax purposes, and every partnership which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall on or before the fifteenth day of the third month following the close of each taxable year make a payment of a filing fee. The amount of the filing fee is the amount set forth in subparagraph (B) of this paragraph. The minimum filing fee is twenty-five dollars for taxable years beginning in two thousand eight and thereafter. Limited liability companies that are disregarded entities for federal income tax purposes must pay a filing fee of twenty-five dollars for taxable years beginning on or after January first, two thousand eight.

(B) The filing fee will be based on the New York source gross income of the limited liability company or partnership for the taxable year immediately preceding the taxable year for which the fee is due. If the limited liability company or partnership does not have any New York source gross income for the taxable year immediately preceding the taxable year for which the fee is due, the limited liability company or partnership shall pay the minimum filing fee. Partnerships, other than limited liability partnerships under article eight-B of the partnership

law and foreign limited liability partnerships, with less than one million dollars in New York source gross income are exempt from the filing fee. New York source gross income is the sum of the partners' or members' shares of federal gross income from the partnership or limited liability company derived from or connected with New York sources, determined in accordance with the provisions of section six hundred thirty-one of this article as if those provisions and any related provisions expressly referred to a computation of federal gross income from New York sources. For this purpose, federal gross income is computed without any allowance or deduction for cost of goods sold.

The amount of the filing fee for taxable years beginning on or after January first, two thousand eight will be determined in accordance with the following table:

If the New York source gross income is:	The fee is:
not more than \$100,000	\$25
more than \$100,000 but not over \$250,000	\$50
more than \$250,000 but not over \$500,000	\$175
more than \$500,000 but not over \$1,000,000	\$500
more than \$1,000,000 but not over \$5,000,000	\$1,500
more than \$5,000,000 but not over \$25,000,000	\$3,000
Over \$25,000,000	\$4,500

(C) No credits provided by this article may be taken against the fee imposed by this paragraph.

(D) Where the filing fee is not timely paid, it shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and for those purposes any reference in this article to tax imposed by this article shall be deemed also to refer to this filing fee.

(E) Notwithstanding the provisions of subsection (e) of section six hundred ninety-seven of this article, the commissioner shall provide the statements and other required information included on the filing fee payment form under section three hundred one of the limited liability company law, subdivision (g) of section 121-1500 of the partnership law, and subdivision (f) of section 121-1502 of the partnership law, to the secretary of state for filing. Such provision may also include a copy or image of that portion of the report solely pertinent to such information

to the extent feasible. The commissioner may also provide information on noncompliance.

(4) Estimated tax of nonresident partners, members and shareholders.

(A) General. Every entity which is a partnership, other than a publicly traded partnership as defined in section 7704 of the federal Internal Revenue Code, subchapter K limited liability company or an S corporation for which the election provided for in subsection (a) of section six hundred sixty of this part is in effect, which has partners, members or shareholders who are nonresident individuals, as defined under subsection (b) of section six hundred five of this article, or C corporations, and which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall pay estimated tax on such income on behalf of such partners, members or shareholders in the manner and at the times prescribed by subsection (c) of section six hundred eighty-five of this article. For purposes of this paragraph, the term "estimated tax" shall mean a partner's, member's or shareholder's distributive share or pro rata share of the entity income derived from New York sources, multiplied by the highest rate of tax prescribed by section six hundred one of this article for the taxable year of any partner, member or shareholder who is an individual taxpayer, or paragraph (a) of subdivision one of section two hundred ten of this chapter for the taxable year of any partner, member or shareholder which is a C corporation, whether or not such C corporation is subject to tax under article nine, nine-A or thirty-three of this chapter, and reduced by the distributive share or pro rata share of any credits determined under section one hundred eighty-seven, one hundred eighty-seven-a, six hundred six or fifteen hundred eleven of this chapter, whichever is applicable, derived from the entity.

(B) Treatment of payment. Any payment by the entity under this paragraph with respect to a partner, member or shareholder who is an individual shall be deemed to be a payment of estimated tax by the partner, member or shareholder pursuant to subsection (c) of section six hundred eighty-five of this article.

(C) Additions to tax. (i) If an entity required by this paragraph to pay estimated tax on behalf of a partner, member or shareholder fails to

do so, such entity shall pay a penalty of fifty dollars for each such failure for each such partner, member or shareholder, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

(ii) In the case of an underpayment of estimated tax by the entity, there shall be added to the estimated tax required to be paid by the entity under this paragraph, an amount determined pursuant to subsection (c) of section six hundred eighty-five of this article.

(D) Exceptions. (i) This paragraph shall not apply with respect to a partner, member or shareholder for whom estimated tax required to be paid under subparagraph (A) of this paragraph for the taxable year of the partner, member or shareholder does not exceed three hundred dollars.

(ii) This paragraph shall not apply with respect to any partner, member or shareholder if the entity is authorized by the commissioner to file a group return and such partner, member or shareholder has elected to be included on the group return, or if the commissioner has issued a waiver of withholding pursuant to this section. The commissioner may issue such waivers in respect of partners, members or shareholders who are not subject to New York income tax, or who establish that they are filing New York income tax returns and paying estimated taxes when due, and in other circumstances in which the commissioner determines that withholding is not necessary to ensure collection of income tax on New York source income allocable to the nonresident or C corporation.

(E) Information statements. Every entity required under this paragraph to pay estimated taxes for any of its partners, members or shareholders shall furnish, within thirty days after such estimated tax is paid, to each such partner, member or shareholder a written statement showing the estimated taxes paid by the entity on behalf of such partner, member or shareholder and any other information the commissioner shall prescribe, including any information necessary to identify each partner, member or shareholder on whose behalf the entity has paid estimated taxes. The entity shall provide to the commissioner information necessary to identify the estimated tax paid by the entity for each partner, member or shareholder and information necessary to identify each partner, member or shareholder of the partnership, limited liability company or S corporation, whether or not estimated tax was paid for such partner,

member or shareholder by the entity, at such times and in such manner as the commissioner shall prescribe.

(d) Information at source. (1) The commissioner of taxation and finance may prescribe regulations and instructions requiring returns of information to be made and filed on or before February twenty-eighth of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this article. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. Information required to be furnished pursuant to paragraph four of subsection (a) of section six hundred seventy-four on a quarterly combined withholding and wage reporting return covering each calendar quarter of each year and relating to tax withheld on wages paid by an employer to an employee for each calendar quarter, shall constitute the return of information required to be made under this section with respect to such wages.

(2) (A) The commissioner shall be authorized to require, by regulation, that any or all of the returns of information referred to in paragraph one of this subsection, the quarterly combined withholding, wage reporting and unemployment insurance returns required by paragraph four of subsection (a) of section six hundred seventy-four and the reports required by section one hundred seventy-one-h of this chapter be filed on magnetic media or in other machine readable form. Such regulations shall conform, to the extent practicable, with corresponding federal regulations and instructions promulgated pursuant to the authority of section six thousand eleven of the federal Internal Revenue Code. Any person required to file two hundred fifty or more of the returns referred to in paragraph one of this subsection may be required to file such returns on magnetic media or in other machine readable form pursuant to the provisions of this paragraph.

(B) A filer may seek exemption from the magnetic media filing requirement for a particular period, if the filer proves to the

satisfaction of the commissioner of taxation and finance that imposition of such a requirement for that period would result in undue hardship. The commissioner shall take into account (among other relevant factors) the ability of the filer to comply at reasonable cost with such a filing requirement.

(C) The regulations provided for in this paragraph may include, but shall not be limited to, the following:

(i) a description of the kinds of magnetic media which can be used to satisfy the filing requirement;

(ii) a description of the kinds of returns and classes of filers to be subject to the magnetic media or other machine readable form filing requirement; and

(iii) procedures governing the voluntary submission by magnetic media or other machine readable form of all or any portion of the returns described in this paragraph.

(3) The commissioner may by regulation or instruction require the filing of a report annually by the comptroller or program manager of the New York state college choice tuition savings program, or their designee, setting forth the names and identification numbers of account owners, designated beneficiaries and distributees of family tuition accounts, the amounts contributed to such accounts, the amounts distributed from such accounts and the nature of such distributions as qualified withdrawals or as withdrawals other than qualified withdrawals, and any such other information as the commissioner may require regarding the taxation under this article of amounts contributed to or withdrawn from such accounts. The commissioner may require that any such report also be made to the account owner, designated beneficiary or distributee of any such account.

(e) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commission, as may be required by regulation.

(f) (1) Every trust described by subparagraph (D) of paragraph three of subsection (b) of section six hundred five of this article shall make a return for any taxable year in which it makes an accumulation distribution within the meaning of subdivision (b) of section six hundred sixty-five of the internal revenue code to a beneficiary who is

a resident, which return shall include (i) information identifying such resident, (ii) the amount of such accumulation distribution, and (iii) such other information as the commissioner may require. In determining whether there has been an accumulation distribution for purposes of this paragraph, such trust shall exclude distributions from income earned by the trust prior to the beneficiary's birth or attaining the age of twenty-one.

(2) Every resident trust that does not file the return required by section six hundred fifty-one of this part on the ground that it is not subject to tax pursuant to subparagraph (D) of paragraph three of subsection (b) of section six hundred five of this article for the taxable year shall make a return for such taxable year substantiating its entitlement to that exemption and providing such other information as the commissioner may require.

(3) The returns required by this subsection shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this paragraph, "taxable year" means a year or a period which would be a taxable year of the trust if it were subject to tax under this article.

(g) Requirements applicable to tax return preparer.

(1) Signature of tax return preparer. Any individual who is a tax return preparer and prepares any return or claim for refund, shall sign such return or claim for refund in accordance with regulations or instructions prescribed by the commissioner.

(2) Furnishing identifying numbers. Any return or claim for refund which is prepared by a tax return preparer shall include the identifying number of the preparer required by paragraph one of this subsection to sign such return or claim for refund. In addition, where such individual preparer is an employee of an employer which is a tax return preparer with respect to such return or claim for refund, or where such preparer is a partner in a partnership which is a tax return preparer with respect to such return or claim for refund, then such return or claim for refund shall also include the identifying number of such employer or partnership. Such identifying numbers shall be as prescribed by the commissioner in order to secure the proper identification of such individual preparer, partnership or employer. The responsibility for the inclusion of such identifying numbers shall be as set forth in paragraph

two of subsection (u) of section six hundred eighty-five of this article.

(3) Furnishing copy to taxpayer. Any person who is a tax return preparer with respect to any return or claim for refund shall furnish a completed copy of such return or claim for refund to the taxpayer not later than the time such return or claim for refund is presented for such taxpayer's signature.

(4) Copy or list to be retained by tax return preparer. Any person who is a tax return preparer with respect to any return or claim for refund shall for a three year retention period described in paragraph nine of this subsection:

(A) retain a completed copy of such return or claim for refund, or retain, on a list, the name and identification number of the taxpayer for whom such return or claim was prepared, and

(B) make such copy or list available for inspection upon request by the commissioner.

(5) Tax return preparer defined. For purposes of this article, the term "tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation any return or claim for refund. The preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund. Where an employer and one or more employees of such employer are tax return preparers with respect to the same return or claim for refund, or where a partnership and one or more partners in such partnership are tax return preparers with respect to the same return or claim for refund, for purposes of paragraphs three and four of this subsection, such employer or such partnership shall be deemed to be the sole tax return preparer. A person shall not be a "tax return preparer" merely because such person--

(A) furnishes typing, reproducing, or other mechanical assistance,

(B) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed, or

(C) prepares as a fiduciary a return or claim for refund for any person.

(6) Person defined. For purposes of this subsection, the term "person"

includes an individual, corporation (including a dissolved corporation) or partnership.

(7) Return defined. For purposes of this subsection, the term "return" shall mean any return required under this article.

(8) Claim for refund defined. For purposes of this subsection, the term "claim for refund" shall mean a claim for refund of or credit against any tax imposed under this article, and shall include any claim for refund of any credit treated as an overpayment of tax under this article.

(9) Retention period defined. For purposes of this subsection, the term "retention period" shall mean:

(A) in the case of a tax return, the period ending the later of three years after the due date of such return (without regard to extensions) or three years after the date such return was presented to the taxpayer for such taxpayer's signature, and

(B) in the case of a claim for refund, the period ending three years after such claim for refund was presented to the taxpayer for such taxpayer's signature.

* (10) Mandatory electronic filing by certain tax return preparers.

(A)(i) If a tax return preparer prepared more than two hundred original returns during the calendar year beginning on January first, two thousand five, and if, in the calendar year beginning on January first, two thousand six, such tax return preparer prepares one or more authorized returns using tax software, then, for such calendar year two thousand six and for each subsequent calendar year thereafter, all authorized returns prepared by such tax return preparer shall be filed electronically, in accordance with instructions prescribed by the commissioner.

(ii) If a tax return preparer prepared more than one hundred original returns during any calendar year beginning on or after January first, two thousand six, and if, in any succeeding calendar year such tax return preparer prepares one or more authorized returns using tax software, then, for such succeeding calendar year and for each subsequent calendar year thereafter, all authorized returns prepared by such tax return preparer shall be filed electronically, in accordance with instructions prescribed by the commissioner.

(B) For purposes of this paragraph:

(i) "Electronic" means computer technology; provided, however, that the commissioner may, in instructions, provide that use of barcode technology will also satisfy the mandatory electronic filing requirements of this section.

(ii) "Authorized return" means any return required under this article which the commissioner has authorized to be filed electronically.

(iii) "Original return" means a return required under this article that is filed, without regard to extensions, during the calendar year for which that return is required to be filed.

(iv) "Tax software" means any computer software program intended for tax return preparation purposes.

* NB Effective January 1, 2030

§ 659. Report of federal changes, corrections or disallowances. If the amount of a taxpayer's federal taxable income, total taxable amount or ordinary income portion of a lump sum distribution or includible gain of a trust reported on their federal income tax return for any taxable year, or the amount of a taxpayer's earned income credit or credit for employment-related expenses set forth on such return, or the amount of any federal foreign tax credit affecting the calculation of the credit for Canadian provincial taxes under section six hundred twenty or six hundred twenty-A of this article, or the amount of any claim of right adjustment, is changed or corrected by the United States internal revenue service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, or the amount an employer is required to deduct and withhold from wages for federal income tax withholding purposes is changed or corrected by such service or authority or if a taxpayer's claim for credit or refund of federal income tax is disallowed in whole or in part, the taxpayer or employer shall report such change or correction or disallowance within ninety days after the final determination of such change, correction, renegotiation or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Provided, however, if the taxpayer is a direct or indirect partner of a partnership required to report adjustments in accordance with section six hundred fifty-nine-a of this

part, such taxpayer shall also report such adjustments in accordance with section six hundred fifty-nine-a of this part. The allowance of a tentative carryback adjustment based upon a net operating loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this section. Any taxpayer filing an amended federal income tax return and any employer filing an amended federal return of income tax withheld shall also file within ninety days thereafter an amended return under this article, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as they deem appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having a resident partner or having any income derived from New York sources, and a corporation with respect to which the taxable year of such change, correction, disallowance or amendment is a year with respect to which the election provided for in subsection (a) of section six hundred sixty of this article is in effect, and (ii) the term "federal income tax return" shall include the returns of income required under sections six thousand thirty-one and six thousand thirty-seven of the internal revenue code. In the case of such a corporation, such report shall also include any change or correction of the taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code. Reports made under this section by a partnership or corporation shall indicate the portion of the change in each item of income, gain, loss or deduction (and, in the case of a corporation, of each change in, or disallowance of a claim for credit or refund of, a tax referred to in the preceding sentence) allocable to each partner or shareholder and shall set forth such identifying information with respect to such partner or shareholder as may be prescribed by the commissioner.

§ 659-a. Reporting of federal partnership adjustments. (a) If any item required to be shown on a federal partnership return, for any partnership that has a resident partner or any income derived from New York sources, including any gross income, gain, loss, deduction, penalty, credit, or tax for any year of such partnership, including any

amount of any partner's distributive share, is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, and the partnership is issued an adjustment under section sixty-two hundred twenty-five of the internal revenue code or makes a federal election for alternative payment with the internal revenue service as part of a partnership level audit, or files an administrative adjustment request, the partnership shall report, in the manner prescribed by the commissioner, each change or correction in sufficient detail to allow for the computation of the New York tax change or correction for the reviewed year within ninety days after the date of each final federal determination, or ninety days after the filing of an administrative adjustment request.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Administrative adjustment request" means an administrative adjustment request filed by a partnership under section sixty-two hundred twenty-seven of the internal revenue code.

(2) "Direct partner" means a partner that holds an interest directly in an impacted partnership during the reviewed year.

(3) "Federal election for alternative payment" means the election described in section sixty-two hundred twenty-six of the internal revenue code, relating to alternative payment of imputed underpayment by partnership.

(4) "Final federal adjustment" means a change to an item of gross income, gain, loss, deduction, penalty, credit, or a partner's distributive share, of an impacted partnership determined under section sixty-two hundred twenty-five of the internal revenue code that is considered fixed and final under the internal revenue code.

(5) "Final federal determination date" means the date on which each adjustment or resolution resulting from an internal revenue service examination is assessed pursuant to section sixty-two hundred three of the internal revenue code.

(6) "Impacted partnership" means a partnership that (i) was issued a final federal adjustment; or (ii) made a federal election for alternative payment with the internal revenue service as part of a federal partnership level audit; or (iii) filed an administrative adjustment request with the internal revenue service.

(7) "Indirect partner" means a partner, member, or shareholder in a partnership or other pass-through entity that itself held an interest indirectly, or through another indirect partner, in an impacted partnership during the reviewed year.

(8) "New York election for alternative payment" means the election described in paragraph three of subsection (d) of this section, relating to payment by the impacted partnership in lieu of taxes owed by its direct and indirect partners.

(9) "Reviewed year" has the meaning provided in paragraph one of subsection (d) of section sixty-two hundred twenty-five of the internal revenue code.

(10) "Tiered partner" means any partner in an impacted partnership where such partner is a partnership, S corporation, or other pass-through entity for New York tax purposes.

(c) Reporting adjustments to federal taxable income. Where partnerships and partners were required to report final federal adjustments or administrative adjustment requests for federal purposes by taking such adjustments into account on a timely filed amended federal income tax return for the reviewed year, such partnerships and partners shall report and pay any New York tax owed under article nine-A, twenty-two, thirty-three, or any law authorized by article thirty of this chapter in the same manner for the reviewed year. Such partnerships and partners shall report final federal adjustments arising from an audit or other action by the internal revenue service or reported by the taxpayer on a timely filed amended federal income tax return, including a return or other similar report filed pursuant to section sixty-two hundred twenty-five of the internal revenue code, or federal claim for refund by filing a federal adjustments report and, if applicable, such partnerships and partners shall pay the additional tax due no later than one hundred eighty days after the final determination date.

(d) Reporting federal adjustments pursuant to a partnership level audit and administrative adjustment request. Except for adjustments required to be reported under subsection (c) of this section, partnerships and partners shall report final federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as required under this subsection in the year of

adjustment.

(1) Unless a de minimis exception applies, impacted partnerships must report any final federal adjustments and administrative adjustment requests regardless of tax impact. Such report must include the impacted partnership's direct and indirect partner identifying information and any other information the commissioner may require.

(2) Except for those subject to a properly made election for alternative payment under paragraph three of this subsection, any changes or corrections made by the internal revenue service pursuant to such a final federal adjustment or as a result of an administrative adjustment request must be reported by the impacted partnership as follows:

(A) No later than ninety days after the final determination date, the partnership shall:

(i) file a completed federal adjustments report, including any information as required by the commissioner;

(ii) notify each of its direct partners of their distributive share of the final federal adjustment, including any information required by the commissioner;

(iii) file an amended return as required under paragraph one of subsection (c) of section six hundred fifty-eight and section six hundred fifty-nine of this article for the reviewed year;

(iv) file an amended group return if the partnership originally filed a group return, and remit the additional amount that would have been due under subsection (c) of section six hundred fifty-eight of this article had the final federal adjustments been properly reported originally as required; and

(v) remit any additional amounts that would have been due under paragraph four of subsection (c) of section six hundred fifty-eight of this article had the final federal adjustments been properly originally reported as required.

(B) No later than one hundred eighty days after the final determination date, each direct partner of an impacted partnership that is taxed under article nine-A, twenty-two, thirty-three, or any law authorized by article thirty of this chapter, other than a direct partner that is included on a group return under clause (iv) of subparagraph (A) of this paragraph, shall:

(i) file a federal adjustments report reporting their distributive share of the adjustments reported to them by the impacted partnership under clause (ii) of subparagraph (A) of this paragraph; and

(ii) remit any additional amount of tax due, plus any penalty and interest computed under this article based on the due date of the originally filed return for the reviewed year, less any credit for amounts paid or withheld and remitted on behalf of the direct partner.

(3) New York election for alternative payment by the partnership. An impacted partnership making an election under this subsection shall:

(A) no later than ninety days after the final determination date, file a completed federal adjustments report, including any information as required by the commissioner, and provide notice, in the manner required by the commissioner, that it is making the election under this subsection.

(B) no later than one hundred eighty days after the final determination date, pay an amount, in lieu of taxes owed by its direct and indirect partners. Such amount shall be determined based on the sum of the following:

(i) for direct partners subject to tax pursuant to article nine-A or thirty-three of this chapter in the reviewed year, the partner's distributive share of gross income or gain and deduction apportioned to New York using the apportionment rules described in article nine-A of this chapter multiplied by the highest tax rate under such article nine-A in effect for the reviewed year; and

(ii) for a direct partner subject to tax under this article that is treated as a nonresident pursuant to paragraph two of subsection (b) of section six hundred five of this article in the reviewed year, the partner's distributive share of gross income or gain and deduction allocated to New York using the allocation rules described in this article multiplied by the highest tax rate under this article in effect for the reviewed year; and

(iii) for a direct partner subject to tax under this article that is treated as a resident pursuant to paragraph one of subsection (b) of section six hundred five of this article in the reviewed year, the partner's distributive share of gross income or gain and deduction multiplied by the highest tax rate under this article in effect for the reviewed year; and

(iv) for a direct partner subject to tax under article thirty of this chapter that is treated as a resident pursuant to subsection (a) of section thirteen hundred five of this chapter in the reviewed year, the amount described in clause (iii) of this subparagraph and the partner's distributive share of gross income or gain and deduction multiplied by the highest tax rate under section thirteen hundred four of this chapter in effect for the reviewed year; and

(v) for tiered partners, include the sum of:

(I) the amount of gross income, gain or deduction from the adjustment that would ultimately flow to a taxpayer subject to tax under article nine-A or thirty-three of this chapter in the reviewed year apportioned to New York using the apportionment rules described in article nine-A of this chapter multiplied by the highest tax rate under such article nine-A in effect for the reviewed year; and

(II) the amount of gross income, gain or deduction from the adjustment that would ultimately flow to a taxpayer subject to tax under this article and treated as a nonresident pursuant to paragraph two of subsection (b) of section six hundred five of this article in the reviewed year allocated to New York using the allocation rules described in this article multiplied by the highest tax rate under this article in effect for the reviewed year; and

(III) the amount of gross income, gain or deduction from the adjustment that would ultimately flow to a taxpayer subject to tax under this article and treated as a resident pursuant to paragraph one of subsection (b) of section six hundred five of this article in the reviewed year multiplied by the highest tax rate under this article in effect for the reviewed year; and

(IV) any amount of gross income, gain or deduction from the adjustment that cannot be established to be properly allocable to a taxpayer described in items (I) or (II) of this clause, multiplied by the highest tax rate under this article in effect for the reviewed year; and

(vi) any applicable penalty and interest as required by this article.

(4) Tiered partners. The direct and indirect partners of an impacted partnership that are tiered partners, and all of the partners of those tiered partners that are subject to tax under article nine-a, twenty-two, thirty-three, or any law authorized by article thirty of this chapter, are subject to the reporting and payment requirements of

paragraph two of this subsection and the tiered partners are entitled to make the elections provided in paragraphs three and five of this subsection. The tiered partners or their partners shall make all required reports and payments no later than ninety days after the time for filing and furnishing statements to tiered partners and their partners pursuant to section sixty-two hundred twenty-six of the internal revenue code and the regulations thereunder.

(5) Modified reporting and payment method. In the manner required by the commissioner, an impacted partnership or tiered partner may enter into an agreement with the commissioner to utilize an alternative reporting and payment method, including applicable time requirements or any other provision of this section, if the impacted partnership or tiered partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, penalties, and interest due under the provisions of this section, or if the impacted partnership or tiered partner can show that their direct partners have agreed to allow a refund of the tax to the entity. Application for approval of an alternative reporting and payment method must be made by the impacted partnership or tiered partner within the time for election as provided in paragraph three or four of this subsection, as appropriate.

(6) Effect of election by impacted partnership or tiered partner and payment of amount due. (A) The election made pursuant to paragraph three or five of this subsection is irrevocable, unless the commissioner, in their discretion, determines otherwise.

(B) If properly reported and paid by the impacted partnership or tiered partner, the amount determined in subparagraph (B) of paragraph three of this subsection, or similarly under an optional election pursuant to paragraph five of this subsection, will be treated as a payment in lieu of taxes owed by its direct and indirect partners, to the extent applicable, on the same final federal adjustment. The direct partners or indirect partners may not take any deduction or credit for this amount or claim a refund of such amount. Provided, however, that nothing in this paragraph shall preclude a resident direct partner from claiming a credit against taxes paid to the commissioner pursuant to article twenty-two of this chapter for any amounts paid by the impacted partnership or tiered partner on such resident partner's behalf to another state or local tax jurisdiction in accordance with the

provisions of section six hundred twenty of this article.

(7) Failure of impacted partnership or tiered partner to report or remit. Nothing in this section shall prevent the commissioner from assessing direct or indirect partners for any taxes due, using the best information available, in the event that an impacted partnership, or a direct or indirect partner of an impacted partnership, fails to timely report or remit any report or additional taxes due required by this section for any reason.

(e) De minimis exception. The commissioner shall have the discretion to promulgate regulations to establish a de minimis amount upon which a taxpayer shall not be required to comply with subsections (c) and/or (d) of this section.

(f) Estimated tax payments during the course of a federal audit. An impacted partnership may make estimated payments of the tax expected to result from a pending internal revenue service audit, prior to the due date of the federal adjustments report and prior to filing the report with the commissioner. If an impacted partnership makes an estimated payment under this subsection, other than an estimated payment made under paragraph four of subsection (c) of section six hundred fifty-eight of this article, such estimated payment must be accompanied by an irrevocable election under paragraph three of subsection (d) of this section. The estimated tax payments shall be credited against any tax liability ultimately found to be due and will limit the accrual of further statutory interest on such amount. If the estimated tax payments exceed the final tax liability and statutory interest ultimately determined to be due, the taxpayer is entitled to a refund or credit of the excess, provided the taxpayer files a federal adjustments report or claim for refund or credit of tax pursuant to section six hundred eighty-six of this article, no later than one year following the final determination date.

(g) Claims for refund or credits of tax arising from a final federal adjustment. Except for final federal adjustments required to be reported for the year of the adjustment, a taxpayer may file a claim for refund or credit of tax arising from federal adjustments on or before the later of:

(1) the expiration of the last day for filing a claim for refund or credit pursuant to section six hundred eighty-seven of this article,

including any extensions; or

(2) one year from the date a federal adjustment report pursuant to subsection (c) or (d) of this section, as applicable, was due, including any extensions pursuant to subsection (h) of this section.

(h) Scope of adjustments and extensions of time. (1) Unless otherwise agreed in writing by the taxpayer and the commissioner, any adjustments by the commissioner or the taxpayer made after the period of limitations for assessment or refund has terminated under article nine-A, twenty-two, thirty-three, or any law authorized by article thirty of this chapter, is limited to changes to the taxpayer's tax liability arising from such a final federal adjustment.

(2) The time periods provided for in this section may be extended:

(A) automatically, upon written notice to the commissioner, by sixty days for an impacted partnership or tiered partner which has ten thousand or more direct partners; or

(B) by written agreement between the taxpayer and the commissioner.

(3) Any extension granted under this subsection for filing a federal adjustments report extends the last day prescribed by law for assessing any additional tax arising from the adjustments to federal taxable income and the period for filing a claim for refund or credit of taxes under article nine-A, twenty-two, thirty-three, or any law authorized by article thirty of this chapter.

§ 660. Election by shareholders of S corporations. (a) Election. If a corporation is an eligible S corporation, the shareholders of the corporation may elect in the manner set forth in subsection (b) of this section to take into account, to the extent provided for in this article (or in article thirteen of this chapter, in the case of a shareholder which is a taxpayer under such article), the S corporation items of income, loss, deduction and reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code which are taken into account for federal income tax purposes for the taxable year. No election under this subsection shall be effective unless all shareholders of the corporation have so elected. An eligible S corporation is (i) an S corporation which is subject to tax under article nine-A of this chapter, or (ii) an S

corporation which is the parent of a qualified subchapter S subsidiary subject to tax under article nine-A, where the shareholders of such parent corporation are entitled to make the election under this subsection by reason of subparagraph three of paragraph (k) of subdivision nine of section two hundred eight of this chapter.

(b) Requirements of election. An election under subsection (a) of this section shall be made on such form and in such manner as the tax commission may prescribe by regulation or instruction.

(1) When made. An election under subsection (a) of this section may be made at any time during the preceding taxable year of the corporation or at any time during the taxable year of the corporation and on or before the fifteenth day of the third month of such taxable year.

(2) Certain elections made during first two and one-half months. If an election made under subsection (a) of this section is made for any taxable year of the corporation during such year and on or before the fifteenth day of the third month of such year, such election shall be treated as made for the following taxable year if

(A) on one or more days in such taxable year before the day on which the election was made the corporation did not meet the requirements of subsection (b) of section thirteen hundred sixty-one of the internal revenue code or

(B) one or more of the shareholders who held stock in the corporation during such taxable year and before the election was made did not consent to the election.

(3) Elections made after first two and one-half months. If an election under subsection (a) of this section is made for any taxable year of the corporation and such election is made after the fifteenth day of the third month of such taxable year and on or before the fifteenth day of the third month of the following taxable year, such election shall be treated as made for the following taxable year.

(4) Taxable years of two and one-half months or less. For purposes of this subsection, an election for a taxable year made not later than two months and fifteen days after the first day of the taxable year shall be treated as timely made during such year.

(5) Authority to treat late elections, etc., as timely. If (A) an election under subsection (a) of this section is made for any taxable year (determined without regard to paragraph three of this subsection)

after the date prescribed by this subsection for making such election for such taxable year, or if no such election is made for any taxable year, and

(B) the commissioner determines that there was reasonable cause for failure to timely make such election, then

(C) the commissioner may treat such an election as timely made for such taxable year (and paragraph three of this subsection shall not apply).

(6) Years for which effective. An election under subsection (a) of this section shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation until such election is terminated under subsection (c) of this section.

(c) Termination. An election under subsection (a) of this section shall cease to be effective

(1) on the day an election to be an S corporation ceases to be effective for federal income tax purposes pursuant to subsection (d) of section thirteen hundred sixty-two of the internal revenue code, or

(2) if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made revoke such election in the manner the tax commission may prescribe by regulation,

(A) on the first day of the taxable year of the corporation, if the revocation is made during such taxable year and on or before the fifteenth day of the third month thereof, or

(B) on the first day of the following taxable year of the corporation, if the revocation is made during the taxable year but after the fifteenth day of the third month thereof, or

(C) on and after the date so specified, if the revocation specifies a date for revocation which is on or after the day on which the revocation is made, or

(3) if any person who was not a shareholder of the corporation on the day on which the election is made becomes a shareholder in the corporation and affirmatively refuses to consent to such election in the manner the tax commission may prescribe by regulation, on the day such person becomes a shareholder.

(d) New York S termination year. In the case of a New York S

termination year, the amount of any item of S corporation income, loss and deduction and reductions for taxes (as described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code) required to be taken account of under this article shall be adjusted in the same manner that the S corporation's items which are included in the shareholder's federal adjusted gross income are adjusted under subsection (s) of section six hundred twelve.

(e) Inadvertent invalid elections. If (1) an election under subsection (a) of this section was not effective for the taxable year for which made (determined without regard to paragraph two of subsection (b) of this section) by reason of a failure to obtain shareholder consents,

(2) the commissioner determines that the circumstances resulting in such ineffectiveness were inadvertent,

(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken to acquire the required shareholder consents, and

(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as a New York S corporation) as may be required by the commissioner with respect to such period,

(5) then, notwithstanding the circumstances resulting in such ineffectiveness, such corporation shall be treated as a New York S corporation during the period specified by the commissioner.

(f) Validated federal elections. If (1) an election under subsection (a) of this section was made for a taxable year or years of a corporation, which years occur with or within the period for which the federal S election of such corporation has been validated pursuant to the provisions of subsection (f) of section thirteen hundred sixty-two of the internal revenue code, and

(2) the corporation, and each person who was a shareholder in the corporation at any time during such taxable year or years agrees to make such adjustments (consistent with the treatment of the corporation as a New York S corporation) as may be required by the commissioner with respect to such year or years,

(3) then such corporation shall be treated as a New York S corporation during such year or years.

(g) Transitional rule. Any election made under this section (as in effect for taxable years beginning before January first, nineteen hundred eighty-three) shall be treated as an election made under subsection (a) of this section.

(h) Cross reference. For definitions relating to S corporations, see subdivision one-A of section two hundred eight of this chapter.

(i) Mandated New York S corporation election. (1) Notwithstanding the provisions in subsection (a) of this section, in the case of an eligible S corporation for which the election under subsection (a) of this section is not in effect for the current taxable year, the shareholders of an eligible S corporation are deemed to have made that election effective for the eligible S corporation's entire current taxable year, if the eligible S corporation's investment income for the current taxable year is more than fifty percent of its federal gross income for such year. In determining whether an eligible S corporation is deemed to have made that election, the income of a qualified subchapter S subsidiary owned directly or indirectly by the eligible S corporation shall be included with the income of the eligible S corporation.

(2) For the purposes of this subsection, the term "eligible S corporation" has the same definition as in subsection (a) of this section.

(3) For the purposes of this subsection, the term "investment income" means the sum of an eligible S corporation's gross income from interest, dividends, royalties, annuities, rents and gains derived from dealings in property, including the corporation's share of such items from a partnership, estate or trust, to the extent such items would be includable in federal gross income for the taxable year.

(4) Estimated tax payments. When making estimated tax payments required to be made under this chapter in the current tax year, the eligible S corporation and its shareholders may rely on the eligible S corporation's filing status for the prior year. If the eligible S corporation's filing status changes from the prior tax year the corporation or the shareholders, as the case may be, which made the payments shall be entitled to a refund of such estimated tax payments. No additions to tax with respect to any required declarations or payments of estimated tax imposed under this chapter shall be imposed on the corporation or shareholders, whichever is the taxpayer for the

current taxable year, if the corporation or the shareholders file such declarations and make such estimated tax payments by January fifteenth of the following calendar year, regardless of whether the taxpayer's tax year is a calendar or a fiscal year.

§ 661. Change of election. Any election expressly authorized by this article may be changed on such terms and conditions as the tax commission may prescribe by regulation.

§ 662. Computation of tax where taxpayer restores substantial amount held under claim of right. (a) General. If:

(1) an item was included in New York adjusted gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item, and

(2) for the current taxable year the provisions of paragraph five of subsection (a) of section thirteen hundred forty-one of the internal revenue code apply to such item, then the tax imposed by this article for the taxable year shall be an amount equal to

(3) the tax for the taxable year computed without regard to this section, minus

(4) the decrease in tax under this article for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from New York adjusted gross income for such prior taxable year (or years).

(b) Special rules. (1) If the decrease in tax ascertained under paragraph four of subsection (a) of this section exceeds the tax imposed by this article for the taxable year, such excess shall be considered a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) Nonresidents and part-year residents. In the case of a nonresident or part-year resident, the exclusion of an item from New York adjusted gross income for a prior taxable year beginning after nineteen hundred eighty-seven under paragraph four of subsection (a) of this section shall also be reflected, as appropriate, in the New York

source fraction.

§ 663. Estimated tax on sale or transfer of real property by nonresident. (a) Upon the sale of real property within the state by a nonresident taxpayer, the nonresident shall estimate the personal income tax liability on the gain, if any, from such sale or transfer. In addition, upon the sale, conveyance or other disposition of shares of stock in a cooperative housing corporation in connection with the transfer of a proprietary leasehold by the owner thereof and subject to the provisions of article thirty-one of this chapter, the nonresident shall estimate the personal income tax liability on the gain, if any, from such sale, conveyance or other disposition.

(b) Such estimation shall be done upon a form prescribed by the commissioner, utilizing an estimated tax rate equal to the highest rate of tax for the taxable year set forth in section six hundred one of this article.

(c) This section shall not apply where:

(1) The real property being sold or transferred is a principal residence of the seller or transferor within the meaning of section 121 of the Internal Revenue Code;

(2) The seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration; or

(3) The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or a private mortgage insurance company; or

(4) The proprietary leasehold being transferred in connection with the sale, conveyance or other disposition of the shares of stock in a cooperative housing corporation is a principal residence of the seller or transferor within the meaning of section 121 of the Internal Revenue Code;

(d) A recording officer shall not record or accept for recording any deed unless one of the following conditions is satisfied:

(1) it is accompanied by a receipt issued by the commissioner

indicating that the estimated tax required by this section has been paid to the commissioner either electronically or as otherwise prescribed by him or her;

(2) it is accompanied by a form prescribed by the commissioner pursuant to subsection (b) of this section and the payment of any estimated tax shown as payable on such form; or

(3) such receipt or form includes a certification by the transferor that this section is inapplicable to the sale or transfer.

(e) Every recording officer shall act as an agent of the commissioner for purposes of collecting the estimated personal income tax, if any, shown to be payable upon the form prescribed pursuant to subsection (b) of this section. The commissioner, by regulation, shall prescribe one or more methods for the recording officer's collection of such estimated tax. Every recording officer shall remit to the commissioner any funds collected and any returns filed with such recording officer under this section on such days as the commissioner shall set by regulation consistent with the provisions of section fourteen hundred ten of this chapter for the remission of the tax imposed under article thirty-one of this chapter. Every recording officer also shall follow such procedures and keep such records in respect to the implementation of this section as the commissioner may prescribe.

(f) A recording officer shall not be liable under this section for any inaccuracy in any statement on the form prescribed pursuant to subsection (b) of this section or in the amount of estimated personal income tax he or she shall collect under this section so long as he or she shall collect the estimated personal income tax shown as payable on such form.

(g) If a deed is recorded notwithstanding an omission or inaccuracy in the form prescribed pursuant to subsection (b) of this section or in any certification by the transferor on such form or a deficiency in the payment of estimated personal income tax required by this section, the record of such deed shall not be invalidated by reason of such omission, inaccuracy, erroneous certification or deficiency nor shall the title founded on such deed be impaired thereby.

(h) The commissioner shall promulgate rules and regulations implementing this section.

(i) The estimated personal income tax liability on the gain, if any,

from the sale, conveyance or other disposition of shares of stock in a cooperative housing corporation shall be paid to the commissioner no later than the fifteenth day after the delivery of the instrument affecting such sale, conveyance or other disposition. For purposes of this section, the date of the instrument affecting such sale, conveyance or other disposition shall be presumed to be the date of delivery of such instrument.

PART V--WITHHOLDING OF TAX

Section 671. Requirement of withholding tax from wages.

672. Information statement for employee.

673. Credit for tax withheld.

674. Employer's return and payment of withheld taxes.

675. Employer's liability for withheld taxes.

676. Employer's failure to withhold.

677. Designation of third parties to perform acts required of employers.

678. Liability of third parties paying or providing for wages.

§ 671. Requirement of withholding tax from wages. (a) General. (1) Every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this article shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's New York adjusted gross income or New York source income of the employee's wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the commissioner, with due regard to the New York withholding exemptions of the employee and the sum of any credits allowable against the employee's tax. The commissioner shall publish any changes to such method of determining the amount of tax to be withheld on the website of the department of taxation and finance. The commissioner shall also cause

notice of such changes to be published in the section for miscellaneous notices in the state register and shall give other appropriate general notice of such changes.

(2) The tax commission may provide, by regulations, for withholding--

(A) from remuneration for services performed by an employee for his employer which does not constitute wages, and

(B) from any other type of payment, with respect to which the tax commission finds that withholding would be appropriate under the provisions of this article,

if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the tax commission may by regulations provide. For purposes of this article, remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

(3) The tax commission shall provide by regulation for an exemption from withholding for (i) employees under eighteen years of age, (ii) employees under twenty-five years of age who are full-time students and (iii) employees over sixty-five years of age, provided such employees had no income tax liability in the prior year and can reasonably anticipate none in the current year.

* (b) Extension of withholding to certain periodic payments and gambling winnings.

(1) For purposes of this article, any payment subject to withholding, within the meaning of paragraph two of this subsection, shall be treated as if it were wages paid by an employer to an employee.

(2) Payments subject to withholding. For purposes of paragraph one of this subsection, a payment subject to withholding means:

(A) Any supplemental unemployment compensation benefit paid to an individual to the extent includible in such individual's New York adjusted gross income or New York source income.

** (B) Any member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred

thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of New York or subdivision nineteen of section twenty-five hundred seventy-five of the education law and any member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

** NB Effective until ch 525/2011 § 4 takes effect

** (B) Any member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen, subdivision d of section six hundred thirteen or section twelve hundred four-a of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of New York or subdivision nineteen of section twenty-five hundred seventy-five of the education law and any member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

** NB Effective when ch 525/2011 § 4 takes effect until expiration per ch 681/1992 § 16

** (B) Any member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1 or 13-125.1 of the administrative code of the city of New York.

** NB Effective upon expiration of ch 681/1992 § 16

(C) Any payment of an annuity to an individual to the extent includible in such individual's New York adjusted gross income or New York source income, if at the time the payment is made a request that such annuity be subject to withholding under this article is in effect.

(D) Any payment of winnings from a wager placed in a lottery conducted by the division of the lottery, if the proceeds from such wager exceed five thousand dollars.

(E) Any gambling winnings from a wagering transaction within this state, if the proceeds from the wager are subject to withholding under section three thousand four hundred two of the internal revenue code.

(F) Any amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law.

(G) Any amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the administrative code of the city of New York.

(3) Additional provisions applicable to this subsection.

(A) Request for annuity withholding. A request that an annuity be subject to withholding under this article shall be made by the payee in writing to the person making the annuity payments. Such a request may, notwithstanding any provision of law to the contrary, be terminated by furnishing to the person making the payments a written statement of termination. Such a request for withholding or statement of termination shall take effect in such manner as the commissioner of taxation and finance shall prescribe.

(B) Withholding on lottery winnings upon change of residence. If a payee of lottery winnings subject to the provisions of subparagraph (D) of paragraph two of this subsection changes status from resident to nonresident, withholding in accordance with such subparagraph shall constitute other security acceptable to the commissioner within the meaning of subsection (d) of section six hundred thirty-nine of this article.

(C) Proceeds. For purposes of subparagraphs (D) and (E) of paragraph two of this subsection, proceeds from a wager shall be determined by reducing the amount received by the amount of the wager.

(D) Taxes withheld at maximum rate. The tax withheld on any payment subject to withholding under subparagraph (D) or (E) of paragraph two of this subsection shall be withheld at the highest rate of tax on New York taxable income, without any allowance for deductions or exemptions, in effect under this article for the taxable year in which the payment is made.

(E) Determination of residence. For purposes of applying the provisions of subparagraphs (D) and (E) of paragraph two of this

subsection, any payor of proceeds shall determine the residence of the payee of such proceeds in accordance with regulations or instructions of the commissioner of taxation and finance or, in the absence of any such regulations or instructions, in accordance with the address of the payee required under the provisions of paragraph six of subsection (q) of section thirty-four hundred two of the internal revenue code.

* NB Expires per ch. 782/88 § 8

* (b) Extension of withholding to unemployment compensation benefits, annuity payments, and lottery winnings.--

(1) For purposes of this article--

(A) any supplemental unemployment compensation benefit paid to an individual to the extent includible in such individual's New York adjusted gross income or New York source income,

(B) any payment of an annuity to an individual to the extent includible in such individual's New York adjusted gross income or New York source income, if at the time the payment is made a request that such annuity be subject to withholding under this article is in effect, and

(C) any periodic payment (but only where such payment is part of a series of payments extending over a period greater than one year) of lottery winnings by the division of the lottery, if at the time the payment is made a request that such lottery winnings be subject to withholding under this article is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Request for withholding.--A request that an annuity be subject to withholding under this article shall be made by the payee in writing to the person making the annuity payments, and a request that lottery winnings be subject to withholding under this article shall be made by the payee in writing to the division of the lottery, in the manner prescribed by the commissioner of taxation and finance. A request that an annuity be subject to withholding may, notwithstanding any provision of law to the contrary, be terminated by furnishing to the person making the payments a written statement of termination. A request that lottery winnings be subject to withholding under this article shall not be revocable while the payee is a nonresident, and shall constitute other security acceptable to the tax commission within the meaning of

paragraph four of subsection (c) of section six hundred fifty-four of this article. Such a request for withholding or statement of termination shall take effect in such manner as the commissioner of taxation and finance shall provide by regulation.

* NB Effective per ch. 782/88 § 8

(c) Withholding exemptions. For purposes of this section:

(1) The number of New York withholding exemptions which an employee receiving wages taxable under this article may claim shall not exceed the number of New York exemptions allowed pursuant to the provisions of section six hundred sixteen and such additional New York withholding exemptions as may be prescribed by regulations or instructions of the commissioner of taxation and finance, taking into account the applicable standard deduction and such other factors as he finds appropriate.

(2) The amount of each New York withholding exemption shall be the amount of the New York exemption allowed pursuant to the provisions of section six hundred sixteen.

(3) Withholding exemption certificate. An employee shall be required to file with his employer a withholding exemption certificate in accordance with regulations or instructions prescribed by the commissioner of taxation and finance.

§ 672. Information statement for employee. Every employer required to deduct and withhold tax under this article from the wages of an employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February fifteenth of the succeeding year, or, if his employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of the wages is made, a written statement as prescribed by the tax commission showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the tax commission shall prescribe.

§ 673. Credit for tax withheld. Wages upon which tax is required to be

withheld shall be taxable under this article as if no withholding were required, but any amount of tax actually deducted and withheld under this article in any calendar year shall be deemed to have been paid to the tax commission on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the tax commission.

§ 674. Employer's return and payment of withheld taxes. (a) General. Every employer required to deduct and withhold tax under this article shall file a withholding return and pay over to the tax commission or to a depository designated by the tax commission, the taxes so required to be deducted and withheld, as hereafter prescribed.

(1) If, after having made a payroll, an employer has been required to deduct and withhold, but has not paid over, a cumulative aggregate amount of seven hundred dollars or more of tax during a calendar quarter, such employer shall file a return and pay over the tax. If an employer was required to remit a cumulative aggregate amount of less than fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the fifth business day following the date of making such a payroll. If an employer was required to remit a cumulative aggregate amount more than or equal to fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the third business day following the date of making such a payroll. In the case of an "educational organization" as defined in paragraph two of subsection (a) of section nine of this chapter or a "health care provider" as defined in paragraph four of subsection (a) of section nine of this chapter, the tax shall be paid over on or before the fifth business day following the date of making such a payroll.

(2) If, at the close of any calendar quarter, an employer has been required to deduct and withhold, but has not paid over, a cumulative aggregate amount of less than seven hundred dollars of tax during such calendar quarter, such employer shall pay over the tax with the

quarterly combined withholding, wage reporting and unemployment insurance return required to be filed for such quarter by paragraph four of this subsection, on or before the last date prescribed by such paragraph for filing such return.

(3) If an employer makes more than one payroll per week, then such employer shall determine the applicability of the rules described in paragraphs one and two of this subsection measured by the last payroll made within the week by such employer; provided, however, that in any week in which the end of a quarter occurs between the making of payrolls by an employer, any tax required to be deducted and withheld in a payroll or payrolls made during such week prior to or on the end of the quarter shall be paid over. If an employer was required to remit a cumulative aggregate amount of less than fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the fifth business day following the date of making the last payroll in such quarter. If an employer was required to remit a cumulative aggregate amount more than or equal to fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the third business day following the date of making the last payroll in such quarter. In the case of an "educational organization" as defined in paragraph two of subsection (a) of section nine of this chapter or a "health care provider" as defined in paragraph four of subsection (a) of section nine of this chapter, the tax shall be paid over on or before the fifth business day following the date of making such a payroll. For purposes of this paragraph, the term "week" shall mean the period Sunday through Saturday.

(4) (A) All employers described in paragraph one of subsection (a) of section six hundred seventy-one of this part, including those whose wages paid are not sufficient to require the withholding of tax from the wages of any of their employees, all employers required to provide the wage reporting information for the employees described in subdivision one of section one hundred seventy-one-a of this chapter, and all employers liable for unemployment insurance contributions or for payments in lieu of such contributions pursuant to article eighteen of the labor law, shall file a quarterly combined withholding, wage reporting and unemployment insurance return detailing the preceding

calendar quarter's withholding tax transactions, such quarter's wage reporting information, such quarter's withholding reconciliation information, such quarter's unemployment insurance contributions, and such other related information as the commissioner of taxation and finance or the commissioner of labor, as applicable, may prescribe. Such returns shall be filed no later than the last day of the month following the last day of each calendar quarter.

(B) An employer shall, at the time prescribed by subparagraph (A) of this paragraph for filing each quarterly combined withholding, wage reporting and unemployment insurance return, pay over, in a single remittance, the unemployment insurance contributions and aggregate withholding taxes required to be paid over with such return. Notwithstanding any provision of law to the contrary, an overpayment of unemployment insurance contributions or of aggregate withholding taxes made by an employer with the quarterly combined withholding, wage reporting and unemployment insurance return for a calendar quarter may be only credited by such employer against such employer's liability for unemployment insurance contributions or aggregate withholding taxes, respectively.

(C) The provisions of article eighteen of the labor law relating to administration of the state's unemployment insurance program shall apply to the department's duties under this chapter relating to unemployment insurance information, contributions and payments.

(5) The tax commission may, if it believes such action necessary for the protection of the revenues, require any employer to make such return and pay to it the tax deducted and withheld at any time, or from time to time.

(6) Each employer in the construction classification as defined in section one hundred seventy-one-j of this chapter, shall submit to the commissioner quarterly, with such employer's quarterly combined withholding and wage reporting return, information relating to the aggregate numbers of hours worked by all such employees of such employer on a quarterly basis, and the geographic location or locations in which such employees worked during each quarter. Such information shall be reported in such form as the commissioner shall prescribe.

(b) Deposit in trust for tax commission. Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of

the tax as required in this section, the tax commission may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the tax commission, in a separate account, in trust for and payable to the tax commission, and to keep the amount of such tax in such account until payment over to the tax commission. Such notice shall remain in effect until a notice of cancellation is served by the tax commission.

§ 675. Employer's liability for withheld taxes.--Every employer required to deduct and withhold tax under this article is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the tax commission, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this article shall be held to be a special fund in trust for the tax commission. No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the tax commission in compliance or in intended compliance with this article.

§ 676. Employer's failure to withhold. If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

§ 677. Designation of third parties to perform acts required of employers.--In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the tax commission, under regulations promulgated by it, is authorized to

designate such fiduciary, agent, or other person to perform such acts as are required of employers under this article and as the tax commission may specify. Except as may be otherwise prescribed by the tax commission, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

§ 678. Liability of third parties paying or providing for wages.--(a) Direct payment by third party.--If a lender, surety or other person, who is not an employer with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety or other person shall be liable for the amount of taxes (together with interest) required to be deducted and withheld from such wages by the employer.

(b) Funds supplied to employer by third parties.--If a lender, surety or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this article to be deducted and withheld by such employer from such wages, such lender, surety or other person shall be liable for the amount of the taxes (together with interest) which are not paid over to the tax commission by such employer with respect to such wages. However, the liability of such lender, surety or other person shall be limited to an amount equal to twenty-five percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of payment.--Any amounts paid to the tax commission pursuant to this section shall be credited against the liability of the employer.

PART VI--PROCEDURE AND ADMINISTRATION

Section 681. Notice of deficiency.

682. Assessment.

683. Limitations on assessment.

684. Interest on underpayment.

685. Additions to tax and civil penalties.

686. Overpayment.

687. Limitations on credit or refund.

688. Interest on overpayment.

689. Petition to tax commission.

690. Review of tax commission decision.

691. Mailing rules; holidays; miscellaneous.

692. Collection, levy and liens.

693. Transferees.

694. Jeopardy assessment.

695. Criminal penalties; cross-reference.

696. Income taxes of members of armed forces, astronauts, and victims of certain terrorist attacks.

697. General powers of tax commission.

698. Deposit and disposition of revenue.

699. Transition provisions.

§ 681. Notice of deficiency.--(a) General.--If upon examination of a taxpayer's return under this article the tax commission determines that there is a deficiency of income tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of this state. If a husband and wife are jointly liable for tax, a notice of deficiency may be a single joint notice, except that if the tax commission has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be mailed to each spouse at his or her last known address in or out of this state. If the taxpayer

is deceased or under a legal disability, a notice of deficiency may be mailed to his last known address in or out of this state, unless the tax commission has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment.--After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax commission a petition under section six hundred eighty-nine. If the notice of deficiency is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) Restrictions on assessment and levy.--No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section six hundred ninety-four, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the tax commission, until the decision of the tax commission has become final. For exception in the case of judicial review of the decision of the tax commission, see subsection (c) of section six hundred ninety.

(d) Exceptions for mathematical or clerical errors.--If a mathematical or clerical error appears on a return (including an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax), the commissioner shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subsection (f) of section six hundred eighty-seven (limiting credits or refunds after petition to the division of tax appeals), subsection (b) of section six hundred eighty-nine (authorizing the filing of a petition with the division of tax appeals based on a notice of deficiency), or article forty of this chapter, nor shall such assessment or collection be prohibited by the provisions of subsection (c).

(e) Exceptions where federal changes, corrections or disallowances are

not reported.---

(1) If the taxpayer or employer fails to comply with section six hundred fifty-nine or section six hundred fifty-nine-a, instead of the mode and time of assessment provided for in subsection (b) of this section, the commissioner may assess a deficiency based upon such federal change, correction or disallowance by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal change, correction or disallowance or an amended return, where such return was required by section six hundred fifty-nine or section six hundred fifty-nine-a, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subsection (f) of section six hundred eighty-seven (limiting credits or refunds after petition to the division of tax appeals), or subsection (b) of section six hundred eighty-nine (authorizing the filing of a petition with the division of tax appeals based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subsection (c).

(3) If spouses are jointly liable for tax, a notice of additional tax due may be a single joint notice, except that if the commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the joint notice, a duplicate original of the joint notice shall be mailed to each spouse at their last known address in or out of this state. If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to their last known address in or out of this state, unless the commissioner has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

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

(g) Deficiency defined.--For purposes of this article, a deficiency means the amount of the tax imposed by this article, less (i) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by him or by the tax commission), and less (ii) the amounts previously assessed (or collected without assessment) as a deficiency and plus (iii) the amount of any rebates. For the purpose of this definition, the tax imposed by this article and the tax shown on the return shall both be determined without regard to payments on account of estimated tax or the credit for withholding tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

§ 682. Assessment.-- (a) Assessment date.--The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical or clerical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the commissioner shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subsection (b) of section six hundred eighty-one if no petition to the division of tax appeals is filed, or if a petition is filed, then upon the date when a determination or decision rendered in the division of tax appeals establishing the amount of the deficiency becomes final. If an amended return or report filed pursuant to section six hundred fifty-nine or six hundred fifty-nine-a concedes the accuracy of a federal change or correction, any deficiency in tax under this article resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section six hundred eighty-three. If a notice of additional tax due, as prescribed in subsection (e) of section six hundred eighty-one, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subsection unless

within thirty days after the mailing of such notice a report of the federal change or correction or an amended return, where such return was required by section six hundred fifty-nine or six hundred fifty-nine-a, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers.--If the mode or time for the assessment of any tax under this article (including interest, additions to tax and assessable penalties) is not otherwise provided for, the tax commission may establish the same by regulations.

(c) Estimated income tax.--No unpaid amount of estimated tax shall be assessed.

(d) Supplemental assessment.--The tax commission may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section six hundred eighty-one where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference.--For assessment in case of jeopardy, see section six hundred ninety-four.

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

(b) Time return deemed filed.--

(1) Early return.--For purposes of this section a return of income tax, except withholding tax, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(2) Return of withholding tax.--For purposes of this section, if a return of withholding tax for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be deemed to be filed on April fifteenth of such

succeeding calendar year.

(c) Exceptions.--

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

(A) no return is filed,

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

(C) the taxpayer or employer fails to comply with section six hundred fifty-nine or six hundred fifty-nine-a.

(2) Extension by agreement.--Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of federal changes, corrections or disallowances.--If the taxpayer or employer complies with section six hundred fifty-nine or six hundred fifty-nine-a, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in New York tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiency attributable to net operating loss carryback.--If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

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

(6) Request for prompt assessment.--If a return is required for a decedent or for his estate during the period of administration, the tax

shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subsection and subsection (d).

(7) Report on use of certain property.--Under the circumstances described in paragraph two of subsection (g) of section six hundred twelve, the tax may be assessed within three years after the filing of a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) Report concerning waste treatment facility, air pollution control facility or eligible business facility. Under the circumstances described in paragraph (3) of subsection (h) of section six hundred twelve or in paragraph four of subsection (c) of section seven hundred one, the tax may be assessed within three years after the filing of the return containing the information required by such paragraph, or, if a certificate of compliance in respect to an air pollution control facility shall be revoked, within three years after the tax commission shall receive notice of such revocation from the taxpayer or as required by subdivision three of section 19-0309 of the environmental conservation law, whichever notice is received earlier.

(9) Reports concerning empire zone credits. If a taxpayer's certification under article eighteen-B of the general municipal law is revoked with respect to an empire zone or zone equivalent area, any tax liability generated by reason of such decertification may be assessed within three years after the commissioner has received notice of such decertification as required by subdivision (a) of section nine hundred fifty-nine of the general municipal law.

(10) Reports concerning a certificate of completion. If a taxpayer's certificate of completion issued pursuant to section 27-1419 of the environmental conservation law is revoked by a determination issued pursuant to section 27-1419 of the environmental conservation law, any tax liability generated by reason of such revocation may be assessed within one year after such determination is final and is no longer subject to judicial review.

* (11) Extended statute of limitations for tax avoidance transactions.
(A) If a taxpayer or person fails to file, disclose or provide any

statement, return or other information for any taxable year with respect to a listed transaction, as defined in paragraph three of subsection (x) of section six hundred eighty-five of this article, which is required under subdivision (a) of section twenty-five of this chapter, the time for assessment of any tax imposed by this article with respect to such transaction shall not expire before the date which is one year after the earlier of:

(i) the date on which the commissioner is furnished the statement, return, or information so required, or

(ii) the date that the requirements of subdivision (c) of section twenty-five of this chapter are met with respect to a request under such subdivision by the commissioner relating to such transaction.

(B) If later than the time for assessment otherwise provided by this section, tax may be assessed at any time within six years after the return was filed if the deficiency is attributable to an abusive tax avoidance transaction.

(C) For purposes of subparagraph (B) of this paragraph, an "abusive tax avoidance transaction" means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, listed transactions described in paragraph five of subsection (p-1) of section six hundred eighty-five of this article.

* NB Repealed July 1, 2029

(12) Except as otherwise provided in paragraph three of this subsection, or as otherwise provided in this section where a longer period of time may apply, if a taxpayer files an amended return, an assessment of tax (if not deemed to have been made upon the filing of the amended return), including recovery of a previously paid refund, attributable to a change or correction on the amended return from a prior return may be made at any time within one year after such amended return is filed.

(d) Omission of income, total taxable amount or ordinary income portion of a lump sum distribution on return.--The tax may be assessed at any time within six years after the return was filed if--

(1) an individual omits from his New York adjusted gross income, or the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in excess of

twenty-five percent of the amount of New York adjusted gross income, or the total taxable amount or ordinary income portion of a lump sum distribution stated in the return, or

(2) an estate or trust omits from its New York adjusted gross income, or the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in excess of twenty-five percent of the amount stated in the return of New York adjusted gross income determined in accordance with paragraph four of subsection (e) of section six hundred one, or the total taxable amount or ordinary income portion of a lump sum distribution, respectively. For purposes of this subsection there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of the item of income, total taxable amount or ordinary income portion of a lump sum distribution.

(e) Suspension of running of period of limitation.--The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the tax commission is prohibited under subsection (c) of section six hundred eighty-one from making the assessment or from collecting by levy.

§ 684. Interest on underpayment.-- (a) General.--If any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount at the underpayment rate set by the commissioner pursuant to section six hundred ninety-seven of this part, or if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subsection shall not be paid if the amount thereof is less than one dollar. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(b) Exception as to estimated tax.--This section shall not apply to

any failure to pay estimated tax.

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

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

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

(f) Interest treated as tax.--Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as income tax. Any reference in this article to the tax imposed by this article shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax.--Interest shall be imposed under subsection (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within twenty-one calendar days from the date of the notice and demand therefor under subsection (b) of section six hundred ninety-two of this article (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment within specified period after notice and demand.--If notice and demand is made for payment of any amount under subsection (b)

of section six hundred ninety-two of this article, and if such amount is paid within twenty-one calendar days (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

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

(j) Interest on erroneous refund.--Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner, shall bear interest at the underpayment rate set by the commissioner pursuant to section six hundred ninety-seven of this part, or if no rate is set, at the rate of seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

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

§ 685. Additions to tax and civil penalties.--(a) (1) Failure to file tax return.--

(A) In case of failure to file a tax return under this article on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days

of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return.--In case of failure to pay the amounts shown as tax on any return required to be filed under this article on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one per cent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent in the aggregate. For the purpose of computing the addition for any month, the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return.--In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this article which is not so shown (including an assessment made pursuant to subsection (a) of section six hundred eighty-two of this article) within twenty-one calendar days of the date of a notice and demand therefor (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added

to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.--

(A) With respect to any return, the amount of the addition under paragraph one of this subsection shall be reduced by the amount of the addition under paragraph two of this subsection for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of such paragraph one, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subsection shall be reduced by the amount of the addition under paragraph one of this subsection (determined without regard to subparagraph (B) of such paragraph) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(b) Deficiency due to negligence.--

(1) If any part of a deficiency is due to negligence or intentional disregard of this article or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the deficiency.

(2) There shall be added to the tax (in addition to the amount determined under paragraph one of this subsection) an amount equal to fifty percent of the interest payable under section six hundred eighty-four with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code, respectively, and the payee fails to include any portion of such payment in New York adjusted gross income, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subsection, as due to negligence in the absence of clear and convincing evidence to the contrary. If any penalty is imposed under this subsection by reason of the preceding sentence, the amount of the penalty imposed by paragraph one of this subsection shall be five percent of the portion of the underpayment which is attributable to the failure described in the preceding sentence.

(c) Failure by individual to pay estimated income tax.--

(1) Addition to the tax.--Except as otherwise provided in this subsection and subsection (d) of this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this article for the taxable year an amount determined by applying the underpayment rate established under subsection (j) of section six hundred ninety-seven of this part, or if no rate is set, at the rate of seven and one-half percent per annum, to the amount of the underpayment for the period of the underpayment. Such period shall run from the due date for the required installment to the earlier of the fifteenth day of the fourth month following the close of the taxable year or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of determining such date, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid. There shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year.

(2) Amount of underpayment.--For purposes of paragraph one, the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(3) Required installment. (A) Except as provided in paragraph four of this subsection, the amount of any required installment shall be

twenty-five percent of the required annual payment.

(B) The required annual payment is the lesser of

(i) ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year), or

(ii) one hundred percent of the tax shown on the return of the individual for the preceding taxable year. Provided, however, the tax shown on such return for taxable years beginning in two thousand two shall be the tax calculated as if such years began in two thousand three. Provided further, however, that the tax shown on such return for taxable years beginning in two thousand eight shall be calculated as if paragraph three of subsection (f) of section six hundred fifteen of this article has been in effect for taxable years beginning in two thousand eight. Further provided that the tax shown on such return for taxable years beginning in two thousand eight shall be the tax calculated as if such years began in two thousand nine. Provided, however, that the tax shown on such return for taxable years beginning in two thousand nine shall be calculated as if paragraph two of subsection (g) of section six hundred fifteen of this article was in effect for taxable years beginning in two thousand nine and ending before two thousand thirteen.

Clause (ii) of this subparagraph shall not apply if the preceding taxable year was not a taxable year of twelve months or if the individual did not file a return for such preceding taxable year.

(C) Limitation on use of preceding year's tax.

(i) General. If the New York adjusted gross income shown on the return of the individual for the preceding taxable year exceeds one hundred fifty thousand dollars, clause (ii) of subparagraph (B) of this paragraph shall be applied by substituting "one hundred ten percent" for "one hundred percent".

(ii) Separate returns. In the case of a husband and wife who file separate returns pursuant to subsection (b) of section six hundred fifty-one for the taxable year for which the amount of the installment is being determined, clause (i) of this subparagraph shall be applied by substituting "seventy-five thousand dollars" for "one hundred fifty thousand dollars".

(4) Annualized income installment.--(A) In general.--In the case of any required installment, if the individual establishes that the

annualized income installment determined under subparagraph (B) of this paragraph is less than the amount determined under paragraph three, the annualized income installment shall be the required installment. Any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph three by the amount of such reduction, and by increasing successive required installments as necessary to effect full recapture.

(B) Determination of annualized income installment.--In the case of any required installment, the annualized income installment is the excess, if any, of an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over the aggregate amount of any prior required installments for the taxable year. The applicable percentage of the tax shall be twenty-two and one-half percent in the case of the first installment, forty-five percent in the case of the second installment, sixty-seven and one-half percent in the case of the third installment and ninety percent in the case of the fourth installment, and shall be computed without regard to any increase in the rates applicable to the taxable year unless such increase was enacted at least thirty days prior to the due date of the installment.

(5) Definitions and special rules.--(A) Definition of the term tax and application of credits against tax.--For purposes of this subsection and subsection (d), the term "tax" means the tax imposed under this article minus the credits against tax allowed under this article, other than the credit under section six hundred seventy-three, relating to tax withheld on wages. The credit allowed under section six hundred seventy-three for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(B) Special rule where return filed on or before January thirty-first.--If, on or before January thirty-first of the following taxable year, the taxpayer files a return for the taxable year and pays

in full the amount computed on the return as payable, then no addition to tax shall be imposed under paragraph one with respect to any underpayment of the fourth required installment for the taxable year.

(C) Special rules for farmers and fishermen.--For purposes of this subsection, if an individual is a farmer or fisherman for any taxable year there shall be only one required installment for the taxable year, due on January fifteenth of the following taxable year in an amount equal to the required annual payment determined under paragraph three by substituting sixty-six and two-thirds percent for ninety percent and without regard to subparagraph (C) of paragraph three of this subsection. Subparagraph (B) of this paragraph shall be applied by substituting March first for January thirty-first and by treating the required installment under this subparagraph as the fourth required installment. An individual is a farmer or fisherman for any taxable year if the individual's federal gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total federal gross income from all sources for the taxable year or if such individual's federal gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least two-thirds of the total federal gross income from all sources shown on such return.

(D) Fiscal years.--In applying this subsection to a taxable year beginning on any date other than January first, there shall be substituted, for the months specified in this subsection, the months which correspond thereto.

(E) Short taxable year.--This subsection shall be applied to taxable years of less than twelve months in accordance with regulations prescribed by the tax commission.

(F) Joint estimated tax of husband and wife.--A husband and wife may make the required annual payment determined under paragraph three as if they were one taxpayer, in which case the liability under paragraph one with respect to the estimated tax shall be joint and several. No such joint payment may be made if husband and wife are separated under a decree of divorce or separate maintenance, or if they have different taxable years. If a joint payment is made but husband and wife determine their taxes under this article separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or

may be divided between them, as they may elect.

(6) Trusts and certain estates. (A) General. This subsection shall apply to any trust or estate except as provided in subparagraphs (B) and (C) of this paragraph.

(B) Exception for estates and certain trusts. This subsection shall not apply with respect to any taxable year ending before the date two years after the date of the decedent's death to (i) the estate of such decedent or (ii) any trust all of which was treated (under subpart E of part I of subchapter J of chapter one of the internal revenue code) as owned by the decedent and to which the residue of the decedent's estate will pass under his will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes and expenses of administration).

(C) Special rule for annualizations. In the case of any estate or trust, subparagraph (B) of paragraph four of this subsection shall be applied by substituting "ending before the date one month before the due date for the installment" for "ending before the due date for the installment".

(D) In the case of a trust, the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust. Any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and for purposes of this subsection, the amount so treated shall not be treated as a payment of estimated tax made by the trust, but shall be treated as a payment of estimated tax made by such beneficiary on the January fifteenth following the end of the trust's taxable year.

(E) An election under subparagraph (D) of this paragraph shall be made on or before the sixty-fifth day after the close of the taxable year and in such manner as the commissioner of taxation and finance may prescribe.

(F) Extension to last year of estate.--In the case of a taxable year reasonably expected to be the last taxable year of an estate, any reference in subparagraph (D) of this paragraph to a trust shall be treated as including a reference to an estate, and the fiduciary of the estate shall be treated as the trustee.

(d) Exceptions to addition to tax for failure to pay estimated income

tax.--

(1) Where tax is small amount.--No addition to tax shall be imposed under subsection (c) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section six hundred seventy-three, is less than three hundred dollars.

(2) Where no tax liability for preceding taxable year.--No addition to tax shall be imposed under subsection (c) for any taxable year if the preceding taxable year was a taxable year of twelve months, the individual did not have any liability for tax under this article for the preceding taxable year and throughout the preceding taxable year the individual was a resident of this state or a nonresident or part-year resident who had New York source income.

(3) Installment due on or after individual's death.--No addition to tax shall be imposed under subsection (c) with respect to any installment due on or after the individual's death.

(4) Waiver in certain cases.--(A) In general.--No addition to tax shall be imposed under subsection (c) with respect to any underpayment to the extent the tax commission determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals.--No addition to tax shall be imposed under subsection (c) with respect to any underpayment if the tax commission determines that in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year the taxpayer retired after having attained age sixty-two or became disabled, and that such underpayment was due to reasonable cause and not to willful neglect.

(e) Deficiency due to fraud.--(1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to two times the deficiency.

(2) The addition to tax under this subsection shall be in lieu of any other addition to tax imposed by subsection (a) or (b).

(3) In the case of a joint return under section six hundred fifty-one, this subsection shall not apply with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

(f) Non-willful failure to pay withholding tax.-- If any employer,

without intent to evade or defeat any tax imposed by this article or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of section six hundred seventy-four, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subsection (a), and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The tax commission shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this article for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax.-- Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the sum of (i) the total amount of the tax evaded, or not collected, or not accounted for and paid over, and (ii) the interest that has accrued on the total amount of tax evaded on the date this penalty is first imposed until this penalty is paid with interest thereon. No addition to tax under subsections (b) or (e) of this section shall be imposed for any offense to which this subsection applies. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.

(h) Failure to file certain information returns.-- (1) Except as otherwise provided in this paragraph, in case of each failure to file a statement of a payment to another person, required under authority of subsection (d) of section six hundred fifty-eight (relating to information at source) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of fifty dollars for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed ten thousand dollars.

(2) If any partnership, S corporation, or trust required to file a return or report under subsection (c) or subsection (f) of section six hundred fifty-eight or under section six hundred fifty-nine or six hundred fifty-nine-a of this article for any taxable year fails to file such return or report at the time prescribed therefor (determined with regard to any extension of time for filing), or files a return or report which fails to show the information required under such subsection (c) of section six hundred fifty-nine of this article, or files a return or report which fails to show the information required under subsection (d) of section six hundred fifty-nine-a of this article, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the partnership or S corporation a penalty for each month (or fraction thereof) during which such failure continues (but not to exceed five months). The amount of such penalty for any month is the product of fifty dollars, multiplied by the number of partners in the partnership or shareholders in the S corporation during any part of the taxable year who were subject to tax under this article during any part of such taxable year, except that, in the case of a trust, the penalty shall be equal to one hundred fifty dollars a month up to a maximum of fifteen hundred dollars per taxable year.

(i) Additional penalty.--Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return, or to supply any information within the time required by or under this article, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this article, to be imposed, assessed and collected by the tax commission. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.

(j) Fraudulent statement or failure to furnish statement to employee.-- In addition to any criminal penalties provided by law, any person required under the provisions of section six hundred seventy-two to furnish a statement to an employee, who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required under section six hundred seventy-two, or regulations prescribed thereunder,

shall for each such failure be subject to a penalty under this article of fifty dollars.

(k) Failure to supply identifying numbers. -- If any person who is required by regulations prescribed under subsection (b) of section six hundred fifty-eight

(1) to include his identifying number in any return, statement, or other document;

(2) to furnish his identifying number to another person; or

(3) to include in any return, statement or other document made with respect to another person the identifying number of such other person, fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty of five dollars for each such failure described in paragraph one of this subsection and fifty dollars for each such failure described in paragraphs two and three of this subsection, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed ten thousand dollars; except that for failure to include his own identification number in any return, statement or other document, such penalty shall not be imposed unless such person shall have failed to supply his identification number to the tax commission within thirty days after demand therefor.

(l) Additions treated as tax. -- The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this article to income tax or tax imposed by this article, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section six hundred eighty-one, this subsection shall not apply to --

(1) any addition to tax under subsection (a) except as to that portion attributable to a deficiency;

(2) any addition to tax under subsection (c);

(3) any penalty under subsection (h) and any additional penalty under subsection (i); and

(4) any penalties under subsections (j), (k), (q), (r), (s), (u), (v) and (w).

(m) Determination of deficiency. -- For purposes of subsections (b)

and (e), the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(n) Person defined. For purposes of subsections (g), (i), (o), (q) and (r), the term person includes an individual, corporation, partnership or limited liability company or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, or a member, manager or employee of a limited liability company, who as such officer, employee, manager or member is under a duty to perform the act in respect of which the violation occurs.

(o) Failure to make deposits of taxes. -- In case of failure by any person required by this article, or by regulations of the tax commission under this article, to deposit on the date prescribed therefor any amount of tax imposed by this article in a depository authorized pursuant to subsection (a) of section six hundred ninety-two of this article to receive such deposits, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed on such person a penalty of five per cent of the amount of the underpayment. For purposes of this subsection the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof, deposited on or before the date prescribed therefor.

* (p) Substantial understatement of liability.-- (1) If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subsection, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or two thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of tax imposed which is shown on the return reduced by any rebate (within the meaning of subsection (g) of section six hundred eighty-one). The excess under the preceding sentence

shall be determined without regard to items to which subsection (p-1) of this section applies. The commissioner may waive all or any part of the addition to tax provided by this subsection on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

(2) The amount of the understatement under paragraph (1) shall be reduced by that portion of the understatement which is attributable to (A) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or (B) any item if the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

(3)(A) Subparagraph (B) of paragraph two of this subsection shall not apply to any item attributable to a tax shelter.

(B) For purposes of this paragraph, the term "tax shelter" means

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of tax.

* NB Effective until July 1, 2029

* (p) Substantial understatement of liability.--If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subsection, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or two thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of tax imposed which is shown on the return reduced by any rebate (within the meaning of subsection (g) of section six hundred eighty-one). The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are

adequately disclosed in the return or in a statement attached to the return. The tax commission may waive all or any part of the addition to tax provided by this subsection on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

* NB Effective July 1, 2029

* (p-1) Reportable transaction understatement.-- (1) If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to twenty percent of the amount of such understatement.

(2) For purposes of this section, the term "reportable transaction understatement" means the sum of:

(A) the product of--

(i) the amount of the increase (if any) in the applicable tax base which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

(ii) the highest rate of tax imposed by this article, and

(B) the amount of the decrease (if any) in the aggregate amount of credits determined under this article which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A) of this paragraph, any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section one thousand two hundred eleven of the internal revenue code) be allowed for such year, shall be treated as an increase in the applicable tax base.

(3) This subsection shall apply to any item which is attributable to--

(A) any listed transaction, and

(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of tax.

(4) Paragraph one of this subsection shall be applied by substituting "thirty percent" for "twenty percent" with respect to the portion of any

reportable transaction understatement with respect to which the requirement of clause (i) of subparagraph (B) of paragraph ten of this subsection is not met.

(5) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" have the meanings given to such terms by section twenty-five of this chapter, the term "reportable transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(6) In the case of an understatement (as defined in subsection (p) of this section):

(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under subsection (p) of this section, and (B) the addition to tax under subsection (p) of this section shall apply only to the excess of the amount of the substantial understatement (if any) after the application of this subparagraph over the aggregate amount of reportable transaction understatements.

(7) References to an understatement (or a deficiency) in subsection (e) of this section shall be treated as including references to a reportable transaction understatement.

(8) This subsection shall not apply to any portion of any understatement on which a penalty is imposed under subsection (e) of this section.

(9) Except as provided in regulations prescribed by the commissioner, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the commissioner regarding the examination of the return or such other date as is specified by the commissioner.

(10)(A) No penalty shall be imposed under this subsection with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(B) Subparagraph (A) of this paragraph shall not apply to any reportable transaction understatement unless

(i) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with section twenty-five of this chapter,

(ii) there is or was substantial authority for such treatment, and

(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section twenty-five of this chapter shall be treated as meeting the requirements of clause (i) of this subparagraph if the penalty for such failure was rescinded under subsection (x) of this section.

(11)(A) A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief

(i) is based on the facts and law that exist at the time the return which includes such tax treatment is filed, and

(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

(B)(i) An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if

(I) the tax advisor is described in clause (ii) of this subparagraph, or

(II) the opinion is described in clause (iii) of this subparagraph.

(ii) A tax advisor is described in this clause if the tax advisor

(I) is a material advisor (within the meaning of section six thousand one hundred eleven of the internal revenue code or within such meaning as it also applies to a New York reportable transaction as defined in section twenty-five of this chapter) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of subsection (b) of section two hundred sixty-seven of the internal revenue code or subsection (b) of section seven hundred seven of the internal revenue code) to any person who so participates,

(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

(IV) has a disqualifying financial interest with respect to the transaction.

(iii) For purposes of clause (i) of this subparagraph, an opinion is disqualified if the opinion

(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

(III) does not identify and consider all relevant facts, or

(IV) fails to meet any other requirement as the commissioner may prescribe.

* NB Repealed July 1, 2029

(p-2) No penalty will be imposed pursuant to subsection (c) or (p) of this section for a taxable year beginning on or after January first, two thousand eight and before January first, two thousand nine resulting from the denial of an empire zone tax credit claimed by the taxpayer because an empire zone retention certificate was not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis for the tax credit or credits claimed on the return.

(q) Frivolous tax returns and specified frivolous submissions.-- (1) If any individual files what purports to be a return of any tax imposed by this article but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect; and such conduct is due to a position which is frivolous, including a position identified as frivolous under paragraph three of this subsection, or an intent to delay or impede the administration of this article, then such individual shall pay a penalty not exceeding five thousand dollars. This penalty shall be in addition to any other penalty provided by law.

(2) Penalty for specified frivolous submissions. (A) Any person who submits a specified frivolous submission shall pay a penalty of five thousand dollars. This penalty shall be in addition to any other penalty

provided by law.

(B) The term "specified frivolous submission" means a specified submission if any portion of that submission (i) is based on a position that the commissioner has identified as frivolous under paragraph three of this subdivision, or (ii) reflects a desire to delay or impede the administration of this chapter.

(C) The term "specified submission" means a request for conciliation conference, a petition to the division of tax appeals, an application for an installment payment agreement, or an offer in compromise.

(D) If the commissioner provides an individual with notice that a submission is a specified frivolous submission and that person withdraws the submission within thirty days after such notice, the penalty imposed under this paragraph will not apply with respect to that submission.

(3) Listing of frivolous positions. The commissioner will prescribe (and periodically revise) a list of positions that the commissioner has identified as frivolous for purposes of this subsection.

(4) Reduction of penalty. The commissioner may reduce the amount of any penalty imposed under this section if the commissioner determines that such a reduction would promote compliance with and administration of this chapter.

(r) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents.--(1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this article of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding five thousand dollars.

(2) For purposes of paragraph one of this subsection, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person

(whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph one of this subsection, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

(s) False information with respect to withholding.--In addition to any criminal penalty provided by law, if any individual makes a statement under section six hundred seventy-one which results in a decrease in the amounts deducted and withheld under part five of this article, and as of the time such statement was made, there was no reasonable basis for such statement, such individual shall pay a penalty of five hundred dollars for such statement. The tax commission shall waive the penalty imposed under this subsection if the taxes imposed with respect to the individual under this article for the taxable year are equal to or less than the sum of the credits against such taxes allowed by this article, and the payments of estimated tax which are considered payments on account of such taxes.

(t) Unwarranted reduction in utility costs in an empire zone. If during a taxable year a taxpayer has received a reduction in the rate charged for gas, electric, steam or water sold, or gas, electric, steam or water service rendered, pursuant to subdivision eight of section one hundred eighty-six-a of this chapter, based upon a certification as to the claiming of a credit under subsection (k) of section six hundred six of this article, and it is finally determined that such taxpayer is not entitled to such credit in any part, such taxpayer shall be liable to a penalty in an amount equal to such reduction in cost, with interest from the last day of such year, at the rate applicable to underpayments of tax pursuant to this article. The tax commission shall have the power, in its discretion, to waive, reduce or compromise such penalty.

(u) Failure of tax return preparer to conform to certain requirements.--(1) Failure to sign return or claim for refund. If a tax return preparer who is required pursuant to paragraph one of subsection (g) of section six hundred fifty-eight of this article to sign a return

or claim for refund fails to comply with such requirement with respect to such return or claim for refund, the tax return preparer shall be subject to a penalty of two hundred fifty dollars for each such failure to sign, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any tax return preparer with respect to returns filed during any calendar year by the tax return preparer must not exceed ten thousand dollars. Provided, however, that if a tax return preparer has been penalized under this paragraph for a preceding calendar year and again fails to sign his or her name on any return that requires the tax return preparer's signature during a subsequent calendar year, then the penalty under this paragraph for each failure will be five hundred dollars, and no annual cap will apply. This paragraph shall not apply if the penalty under paragraph three of subsection (g) of section thirty-two of this chapter is imposed on the tax return preparer with respect to such return or claim for refund.

(2) Failure to furnish identifying number. If a tax return preparer fails to include any identifying number required to be included on any return or claim for refund pursuant to paragraph two of subsection (g) of section six hundred fifty-eight of this article, the tax return preparer shall be subject to a penalty of one hundred dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not willful neglect. The maximum penalty imposed under this paragraph on any tax return preparer with respect to returns filed during any calendar year must not exceed two thousand five hundred dollars; provided, however, that if a tax return preparer has been penalized under this paragraph for a preceding calendar year and again fails to include the identifying number on one or more returns during a subsequent calendar year, then the penalty under this paragraph for each failure will be two hundred fifty dollars, and no annual cap will apply. this paragraph shall not apply if the penalty under paragraph four of subsection (g) of section thirty-two of this chapter is imposed on the tax return preparer with respect to such return or claim for refund.

(3) Failure to furnish copy to taxpayer. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph three of subsection (g) of section six hundred fifty-eight of this article to furnish a copy of such return or claim

for refund to the taxpayer, and who fails to comply with such provision with respect to such return or claim for refund, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five thousand dollars.

(4) Failure to retain copy or list. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph four of subsection (g) of section six hundred fifty-eight of this article to: (i) retain a copy of such return or claim for refund or retain on a list the name and taxpayer identifying number of the taxpayer for whom such return or claim for refund was prepared and (ii) make such copy or list available for inspection upon request by the commissioner, and who fails to comply with the retention requirement or who complies with the retention requirement but fails to comply with such request by the commissioner, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to any calendar year shall not exceed twenty-five thousand dollars.

* (5) Failure to electronically file. If a tax return preparer is required to file returns electronically pursuant to paragraph ten of subsection (g) of section six hundred fifty-eight of this article, and such preparer fails to file one or more of such returns electronically, then such preparer shall be subject to a penalty of fifty dollars for each such failure to electronically file a return, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

* NB Effective January 1, 2030

(6) For purposes of this subsection, the term "tax return preparer" shall have the same meaning as defined in paragraph five of subsection (g) of section six hundred fifty-eight of this article.

(v) Failure to perform certain acts with respect to the quarterly combined withholding, wage reporting and unemployment insurance return.

(1) Failure to file. (A) Delinquency. (i) General. If an employer fails

to file a quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, as required by paragraph four of subsection (a) of section six hundred seventy-four of this article, then such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty equal to the greater of one thousand dollars or the product of fifty dollars multiplied by the number of employees shown on the last quarterly combined withholding, wage reporting and unemployment insurance return filed by such employer, or if no such return has been filed, the number of employees may be estimated by the commissioner from any information in the commissioner's possession. The total amount of the penalty imposed by this clause on an employer for any such failure shall not exceed ten thousand dollars.

(ii) Coordination of delinquency penalty with other additions to tax and penalties for failure to file. Except as otherwise provided in subparagraph (C) of this paragraph, an employer failing to file the quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, shall only be liable for the penalty prescribed by this subparagraph; such employer shall not be liable for the addition to tax prescribed by paragraph one of subsection (a) of this section or for the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law.

(B) Late filing. (i) Within thirty days of notice. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article, but files such return or any such portion thereof within thirty days after the date the department sends notice of such failure to such employer by certified mail, then the penalty prescribed by subparagraph (A) of this paragraph shall be abated. In addition, such employer shall not be liable for the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law. Provided, however, such employer shall remain liable for the other additions to tax prescribed by subsection (a) of this section, if applicable. Provided, further, that where such employer fails to file such return or any such portion

thereof by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article but is not liable for the penalty prescribed by subparagraph (A) of this paragraph for such failure because such employer complied with the provisions of this clause or clause (iii) of this subparagraph, and where within four successive calendar quarters of such initial failure to file by the prescribed due date, such employer again fails to file such return or portion thereof by such due date, then the provisions of this clause relating to abatement and non-imposition of other additions to tax and penalties for failure to file shall not apply to any such failure within such four successive calendar quarters. In such a case, if such employer files such return or portion thereof within thirty days after the date the department sends notice of such second failure by certified mail, such employer shall be liable for a penalty equal to the lesser of the product of fifty dollars multiplied by the number of employees actually shown on such employer's late filed quarterly combined withholding, wage reporting and unemployment insurance return, but not less than one thousand dollars nor more than ten thousand dollars, or the sum of the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law.

(ii) After thirty days of notice. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return, or any portion thereof, by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article, but files such return or any such portion thereof more than thirty days after the date the department sends notice of such failure to file to such employer by certified mail, then such employer shall be liable for a penalty equal to the greater of the product of fifty dollars multiplied by the number of employees actually shown on such employer's late filed quarterly combined withholding, wage reporting and unemployment insurance return, but not less than one thousand dollars nor more than ten thousand dollars, or the sum of the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law.

(iii) Late filing prior to notice. If an employer fails to file a

quarterly combined withholding, wage reporting and unemployment insurance return, or portion thereof, by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article but files such return or any such portion thereof before the department sends notice of such failure to file by certified mail, then the penalty prescribed by subparagraph (A) of this paragraph shall not be imposed. In addition, such employer shall not be liable for the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law. Provided, however, such employer shall remain liable for the other additions to tax prescribed by subsection (a) of this section, if applicable. Provided, further, that where such employer fails to file such return or any such portion thereof by the due date prescribed by paragraph four of subsection (a) of section six hundred seventy-four of this article but is not liable for the penalty prescribed by subparagraph (A) of this paragraph for such failure because such employer complied with the provisions of this clause or clause (i) of this subparagraph, and where within four successive calendar quarters of such initial failure to file by the prescribed due date, such employer again fails to file such return or any such portion thereof by such due date, then the provisions of this clause relating to non-imposition of penalties and other additions to tax for failure to file shall not apply to any such failure within such four successive calendar quarters. In such a case, if such employer files such return or portion thereof before the department sends notice of such failure by certified mail, such employer shall be liable for a penalty equal to the lesser of the product of fifty dollars multiplied by the number of employees actually shown on such employer's late filed quarterly combined withholding, wage reporting and unemployment insurance return, but not less than one thousand dollars nor more than ten thousand dollars, or the sum of the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law.

(C) Audit following failure to file. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return and an audit is subsequently commenced with respect to

such employer by the department, the department of labor or both, such employer shall, in addition to the penalty prescribed by subparagraph (A) of this paragraph, be liable for the addition to tax prescribed by paragraph one of subsection (a) of this section, the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law, or both, as applicable.

(D) Protests and collection. The department of labor shall adjudicate all disputes regarding the imposition of the penalty prescribed by this paragraph (whether alone or in conjunction with the addition to tax prescribed by paragraph one of subsection (a) of this section and the penalty prescribed by paragraph (b) of subdivision two of section five hundred eighty-one of the labor law), in accordance with the provisions contained in article eighteen of the labor law; provided, however, that the department shall adjudicate disputes in accordance with the procedures prescribed by this chapter where (i) an employer only fails to file the portion of a quarterly combined withholding, wage reporting and unemployment insurance return relating to withholding reconciliation information, (ii) the penalty prescribed by clause (iii) of subparagraph (B) of this paragraph is imposed, or (iii) the department conducts an audit described in subparagraph (C) of this paragraph with respect to withholding tax liability. Once the penalty prescribed by this paragraph is finally determined and no longer subject to administrative or judicial review, the amount thereof shall be deemed to be an obligation owed jointly to the department and the department of labor, and either of such departments may collect such amount in accordance with the procedures prescribed by this chapter or the labor law, as applicable. Any penalty amount so collected shall, if necessary, be allocated as between the withholding tax program and the unemployment insurance program, and shall be deposited and disposed of by the respective department in accordance with applicable law.

(3) Failure to provide complete and correct employee withholding reconciliation information. In the case of a failure by an employer to provide complete and correct quarterly withholding information relating to individual employees on a quarterly combined withholding, wage reporting and unemployment insurance return covering each calendar quarter of a year, such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a

penalty equal to the product of one hundred dollars multiplied by the number of employees for whom such information is incomplete or incorrect; provided, however, that if the number of such employees cannot be determined from the quarterly combined withholding, wage reporting and unemployment insurance return, the commissioner may utilize any information in the commissioner's possession in making such determination. The total amount of the penalty imposed pursuant to this paragraph on an employer for any such failure for each calendar quarter of a year shall not exceed twenty thousand dollars.

(4) Failure to provide complete and correct quarterly withholding information not relating to individual employees. In the case of a failure by an employer to provide complete and correct quarterly withholding information not relating to individual employees on a quarterly combined withholding, wage reporting and unemployment insurance return, such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty equal to five percent of the quarterly withholding tax liability required to be shown by such employer for the quarter covered by such return, or if such liability required to be shown by such employer for the quarter cannot be ascertained, the commissioner may estimate such liability from any information in the commissioner's possession. If such employer provides complete and correct quarterly withholding information not relating to individual employees within thirty days after the department sends notice of such failure to the employer by certified mail, then such penalty shall be abated. No penalty under this paragraph shall be imposed if the department is able to properly verify and reconcile withholding and wage reporting information using the information furnished by the employer. The total amount of the penalty imposed pursuant to this paragraph on an employer for any such failure shall not exceed ten thousand dollars.

(5) Failure to file using prescribed format. In the case of a failure by an employer to file a quarterly combined withholding, wage reporting and unemployment insurance return using the format prescribed by the department pursuant to the authority of paragraph two of subsection (d) of section six hundred fifty-eight of this article and regulations promulgated thereunder, such employer shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect,

pay a penalty equal to the product of fifty dollars multiplied by the number of employees required to be shown on such return. If such employer files such return using the prescribed format within thirty days after the department sends notice of such failure to the employer by certified mail, then such penalty shall be abated. The total amount of the penalty imposed pursuant to this paragraph on an employer for any such failure shall not exceed ten thousand dollars.

(6) Except as otherwise provided in this subsection, and except for the penalties prescribed by paragraph one of subsection (h) and subsection (k) of this section, the penalties prescribed by this subsection shall be in addition to any other penalty or addition to tax provided by law.

(w) Failure to file report regarding newly hired or re-hired employees. If any employer required to file a report pursuant to section one hundred seventy-one-h of this chapter fails to file such report at the time prescribed therefor, or files a report which fails to show the information required pursuant to such section one hundred seventy-one-h, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the employer a penalty equal to the product of twenty dollars, multiplied by the number of employees the employer failed to report, but the total amount imposed on the employer for all such failures during any calendar year shall not exceed ten thousand dollars. If the failure is a result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, the penalty shall be equal to the product of four hundred fifty dollars multiplied by the number of employees the employer failed to report.

* (x) Failure to disclose or provide reportable transaction information.-- (1) Any person who fails to file, disclose or provide any statement, return or other document which is required under subdivision (a) of section twenty-five of this chapter shall pay a penalty in the amount determined under paragraph two of this subsection.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the amount of the penalty under paragraph one of this subsection shall be ten thousand dollars.

(B) The amount of the penalty under paragraph one of this subsection

with respect to a listed transaction shall be twenty-five thousand dollars.

(3) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" shall have the same meanings as used in section twenty-five of this chapter, and the term "reportable transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(4) The commissioner may rescind all or any portion of any penalty imposed by this subsection with respect to any violation if

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this chapter and effective tax administration.

(5) The penalty imposed by this section shall be in addition to any other penalty imposed by this chapter.

* NB Repealed July 1, 2029

* (y) Failure to disclose or provide reportable transaction return.--

(1) Any person who fails to file, disclose or provide any statement, return or other document which is required under subdivision (b) of section twenty-five of this chapter shall pay a penalty in the amount determined under paragraph two of this subsection.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the amount of the penalty under paragraph one of this subsection shall be twenty thousand dollars.

(B) The amount of the penalty under paragraph one of this subsection with respect to a listed transaction shall be the greater of

(i) fifty thousand dollars or,

(ii) fifty percent of the gross income that the organizer or material advisor derived with respect to activities that were the basis for the requirement to file, disclose or provide information pursuant to section six thousand eleven of the internal revenue code, to the extent such gross income is attributable to the avoidance of any tax imposed under this article.

(C) Clause (ii) of subparagraph (B) of this paragraph shall be applied by substituting "seventy-five percent" for "fifty percent" in the case

of an intentional failure or act described in paragraph one of this subsection.

(3) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" shall have the same meanings as used in section twenty-five of this chapter, the term "reportable transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(4) The commissioner may rescind all or any portion of any penalty imposed by this subsection with respect to any violation if

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this chapter and effective tax administration.

(5) The penalty imposed by this subsection shall be in addition to any other penalty imposed by this chapter, except that no penalty shall be imposed under subparagraph (A) or clause (i) of subparagraph (B) of paragraph two of subsection (q) of section one thousand eighty-five of this chapter for the same failure that is the basis for a penalty under this subsection. Nothing in this paragraph shall preclude the imposition of a penalty under clause (ii) of subparagraph (B) of paragraph two of subsection (q) of section one thousand eighty-five of this chapter for the same failure that is the basis for a penalty under clause (ii) of subparagraph (B) of paragraph two of this subsection.

* NB Repealed July 1, 2029

* (z) Failure to maintain list of advisees.-- (1) If any person who is required to maintain a list under subdivision (c) of section twenty-five of this chapter fails to make a duplicate of such list available, upon written request by the commissioner in accordance with such subsection within twenty business days after the date of the request, such person shall pay a penalty of ten thousand dollars for each day of such failure after such twentieth day.

(2) No penalty shall be imposed by paragraph one of this subsection with respect to the failure on any day if such failure is due to reasonable cause.

* NB Repealed July 1, 2029

(aa) Tax preparer penalty.-- (1) If a tax return preparer takes a position on any income tax return or credit claim form that either understates the tax liability or increases the claim for a refund, and the preparer knew, or reasonably should have known, that said position was not proper, and such position was not adequately disclosed on the return or in a statement attached to the return, such income tax preparer shall pay a penalty of between one hundred and one thousand dollars.

(2) If a tax return preparer takes a position on any income tax return or credit claim form that either understates the tax liability or increases the claim for a refund and the understatement of the tax liability or the increased claim for refund is due to the preparer's reckless or intentional disregard of the law, rules or regulations, such preparer shall pay a penalty of between five hundred and five thousand dollars. The amount of the penalty payable by any person by reason of this paragraph shall be reduced by the amount of the penalty paid by such person by reason of paragraph one of this subsection.

(3) For purposes of this subsection, the term "understatement of tax liability" means any understatement of the net amount payable with respect to any tax imposed under this article or any overstatement of the net amount creditable or refundable with respect to any such tax.

(4) For purposes of this subsection, the term "tax return prepared" shall have the same meaning as defined in paragraph five of subsection (g) of section six hundred fifty-eight of this article.

(5) This subsection shall not apply if the penalty under subsection (r) of this section is imposed on the tax return preparer with respect to such understatement.

* (bb) Promoting abusive tax shelters.-- (1) Any person who

(A)(i) organizes (or assists in the organization of)

(I) a partnership or other entity,

(II) any investment plan or arrangement, or

(III) any other plan or arrangement, or

(ii) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in clause (i) of this subparagraph, and

(B) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)

(i) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(ii) a gross valuation overstatement as to any material matter, and

(C) satisfies any of the following conditions

(i) the person is organized in this state,

(ii) the person is doing business in this state,

(iii) the person is deriving income in this state, or

(iv) the person conducts any of the activities described in subparagraph (A) or (B) of this paragraph within the state of New York, shall pay, with respect to each activity described in subparagraph (A) of this paragraph, a penalty equal to one thousand dollars or, if the person establishes that it is lesser, one hundred percent of the gross income derived (or to be derived) by such person from such activity to the extent such gross income is attributable to the avoidance of any tax imposed under this article; provided, however, that if an activity with respect to which a penalty imposed under this subsection involves a statement described in clause (i) of subparagraph (B) of paragraph one of this subsection, the penalty shall be equal to fifty percent of the gross income derived (or to be derived) from that activity within the state by the person on which the penalty is imposed. For purposes of the preceding sentence, activities described in clause (i) of subparagraph (A) of this paragraph with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in clause (ii) of subparagraph (A) of this paragraph shall be so treated.

(2)(A) For purposes of this subsection, the term "gross valuation overstatement" means any statement as to the value of any property or services if

(i) the value so stated exceeds two hundred percent of the amount determined to be the correct valuation, and

(ii) the value of such property or services is directly related to the amount of any deduction or credit allowable under this chapter to any participant.

(B) The commissioner may waive all or any part of the penalty provided

by paragraph one of this subsection with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that such valuation was made in good faith.

(3) The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

* NB Repealed July 1, 2029

(cc) False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department will be subject to a penalty of one hundred dollars per document submitted, or five hundred dollars per tax return submitted. This penalty will be in addition to any other penalty or addition provided by law.

(dd) Failure to supply all the information required or to provide correct information in secretary of state statements. Unless it is shown that such failure to provide the statement and information required by subdivision (e) of section three hundred one of the limited liability company law, subdivision (g) of section 121-1500 of the partnership law, and subdivision (f) of section 121-1502 of the partnership law is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the entity failing to supply complete and correct information, a penalty of two hundred and fifty dollars per limited liability company, registered limited liability partnership or New York registered foreign limited liability partnership required to provide such information on its filing fee payment form.

§ 686. Overpayment.-- (a) General.-- The commissioner of taxation and finance, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter, including taxes imposed under article twenty-three of this chapter, on the person who made the overpayment, against any liability in respect of any tax imposed pursuant to the authority of this chapter or any other law on such person if such tax is administered by the commissioner of taxation and finance and, as provided in sections one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and one hundred seventy-one-l of this chapter, against

past-due support, a past-due legally enforceable debt, a city of New York tax warrant judgment debt, and against the amount of a default in repayment of a guaranteed student, state university or city university loan. The balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the commissioner approved by the comptroller. The comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the commissioner.

(b) Excessive withholding.--If the amount allowable as a credit for tax withheld from the taxpayer exceeds his tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer.--If there has been an overpayment of tax required to be deducted and withheld under section six hundred seventy-one, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Overpayment by a deceased person.--Notwithstanding section thirteen hundred ten of the surrogate's court procedure act, any overpayment by a decedent not in excess of one thousand dollars may be refunded to the decedent's surviving spouse unless the return for the decedent was filed by his or her executor or administrator.

(e) Credits against estimated tax.--The commissioner may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises, except upon request to the commissioner on or before the last day prescribed for the filing of the return for the succeeding taxable year, determined with regard to any extension of time granted. If good cause is shown for reversing the credit, the commissioner may, in his or her discretion, credit the overpayment

against a liability or refund the overpayment without interest. Provided, the person who made the overpayment will not be relieved of liability for any penalty imposed for a consequent underpayment of estimated tax for the succeeding taxable year. The decision of the commissioner to grant or deny the request is final and not subject to further administrative or judicial review.

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

(g) Assessment and collection after limitation period.--If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(h) Cross reference. For provision barring application of article fifty-two of the civil practice law and rules to any amount to be refunded or credited to a taxpayer, see section seven of this chapter.

(i) Overpayment.--In case of an overpayment of tax required to be paid by an entity as an estimated tax under paragraph four of subsection (c) of section six hundred fifty-eight of this article, a refund shall be made to such entity only to the extent that such overpayment is attributable to a partner, member or shareholder for whom the entity is not required to pay such estimated tax.

§ 687. Limitations on credit or refund.-- (a) General.-- Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii) two years from the time the tax was paid, or (iii) in the case of any overpayment arising from an erroneous denial by the department of environmental conservation of a certification of completion pursuant to section 27-1419 of the environmental conservation law, two years from the time a final determination to the effect that such denial was erroneous is made and is no longer subject to judicial review, whichever of such periods expires the latest, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately

preceding the filing of the claim plus the period of any extension of time for filing the return unless such claim is for a credit or a portion thereof provided pursuant to paragraph two or four of subsection (c), paragraph two or four of subsection (d) or subsection (e) of section six hundred six of this chapter. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim unless such claim is for a credit or a portion thereof provided pursuant to paragraph two or four of subsection (c), paragraph two or four of subsection (d) or subsection (e) of section six hundred six of this chapter. In the case of a claim for credit or refund filed within the period prescribed in paragraph (iii) of this subsection, the amount of the credit or refund may exceed the portion of the tax paid within the applicable period specified in the two immediately preceding sentences, but only to the extent of the amount of the overpayment attributable to the denial described in such paragraph. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

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

(c) Notice of federal change or correction.--A claim for credit or refund of any overpayment of tax attributable to a federal change or correction required to be reported pursuant to section six hundred

fifty-nine or by a partner of a partnership required to report a federal change or correction pursuant to section six hundred fifty-nine-a shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner of taxation and finance. If the report or amended return required by section six hundred fifty-nine or six hundred fifty-nine-a is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(d) Overpayment attributable to net operating loss carryback.--A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due (including extensions thereof) for the taxable year of the loss, or within the period prescribed in subsection (b) in respect of such taxable year, or within the period prescribed in subsection (c), where applicable, in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) Failure to file claim within prescribed period.--No credit or refund shall be allowed or made, except as provided in subsection (f) of this section or subsection (d) of section six hundred ninety, after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this article.

(f) Effect of petition to tax commission.--If a notice of deficiency for a taxable year has been mailed to the taxpayer under section six hundred eighty-one and if the taxpayer files a timely petition with the tax commission under section six hundred eighty-nine, it may determine

that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except--

(1) as to overpayments determined by a decision of the tax commission which has become final; and

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the tax commission which has become final; and

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

(4) as to any amount claimed as a result of a change or correction described in subsection (c).

(g) Limit on amount of credit or refund.--The amount of overpayment determined under subsection (f) shall, when the decision of the tax commission has become final, be credited or refunded in accordance with subsection (a) of section six hundred eighty-six and shall not exceed the amount of tax which the tax commission determines as part of its decision was paid--

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

(2) within the period which would be applicable under subsections (a), (b) or (c), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the tax commission finds that there is an overpayment.

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

(i) Prepaid income tax.--For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment.

(j) Return and payment of withholding tax.--Notwithstanding subsection (h), for purposes of this section with respect to any withholding tax--

(1) if a return for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be considered filed on April fifteenth of such succeeding calendar year; and

(2) if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

(k) Running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability. -- (1) In the case of an individual taxpayer, the running of the periods specified in subsections (a), (b), and (c) of this section shall be suspended during any period of such individual's life that such individual is financially disabled. For purposes of this subsection, an individual taxpayer is an individual who is subject to any state or local personal income tax or surcharge administered by the commissioner.

(2) For purposes of paragraph one of this subsection, an individual taxpayer is financially disabled if such individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of that individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the commissioner may require.

(3) An individual taxpayer shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.

(l) Cross reference.-- For provision barring refund of overpayment credited against tax of a succeeding year, except for good cause shown, see subsection (e) of section six hundred eighty-six.

§ 688. Interest on overpayment.--(a) General.--Notwithstanding the provisions of section sixteen of the state finance law, interest shall be allowed and paid as follows at the overpayment rate set by the

commissioner pursuant to section six hundred ninety-seven, or if no rate is set, at the rate of six per cent per annum upon any overpayment in respect of the tax imposed by this article:

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

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

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

(4) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of taxation and finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph three of this subsection with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall not be construed as limiting or mitigating the effect of any statute of limitations or any other provision of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund on an overpayment.

(5) Amounts of less than five dollars. No interest shall be allowed or paid if the amount thereof is less than five dollars.

(b) Advance payment of tax, payment of estimated tax, and credit for income tax withholding.--The provisions of subsections (h) and (i) of section six hundred eighty-seven applicable in determining the date of

payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Income tax refund within forty-five days of claim for overpayment.--If any overpayment of tax imposed by this article is credited or refunded within forty-five days after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within forty-five days after such return was filed, whichever is later, or within six months after a demand is filed pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, no interest shall be allowed under this section on any such overpayment. In regard to an amended return claiming such overpayment or a claim for credit or refund on which such overpayment was claimed, if such overpayment is refunded within forty-five days of filing such return or such claim, no interest shall be allowed from the date such return or such claim is filed until the day the refund is made. For purposes of this subsection, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

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

(e) No interest until return in processible form.

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

(2) For purposes of paragraph one of this subsection, a return is in a processible form if--

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

(B) such return contains--

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

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

(f) Overpayment credited against past-due support, or against a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or defaulted guaranteed student, state university or city university loans.--If interest is payable pursuant to this section on that portion of an overpayment of tax imposed by this article which is certified by the commissioner of taxation and finance to the comptroller as the amount to be credited against past-due support, or against a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or the amount of a default in repayment of a guaranteed student, state university or city university loan, as the case may be, pursuant to the provisions of section one hundred seventy-one-c, section one hundred seventy-one-d, section one hundred seventy-one-e, section one hundred seventy-one-f or section one hundred seventy-one-l of this chapter, such portion of such an overpayment shall cease to bear interest on the date of such certification.

(g) Cross-reference.--For provision with respect to interest after failure to file notice of federal change under section six hundred fifty-nine or six hundred fifty-nine-a, see subsection (c) of section six hundred eighty-seven.

(h) Notwithstanding any other provisions in this section, for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine, interest will be allowed on an overpayment on any return or report on which one or more empire zone tax credits are claimed, only from the one hundred eightieth day after the taxpayer files with the department an empire zone retention certificate issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis for the tax credit or credits claimed on the return or report.

§ 689. Petition to tax commission.--(a) General.--The form of a petition to the tax commission, and further proceedings before the tax commission in any case initiated by the filing of a petition, shall be governed by such rules as the tax commission shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by one or more members of the tax commission, or by a hearing officer designated by the tax commission to take evidence and report to the tax commission. The tax commissioners shall, acting as a body, jointly decide the case as quickly as practicable. Notice of the decision shall be mailed promptly to the taxpayer by certified or registered mail at his last known address, and such notice shall set forth the tax commission's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer.

(b) Petition for redetermination of a deficiency.--Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section six hundred eighty-one, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subsection (g) of section six hundred eighty-seven.

(c) Petition for refund.--A taxpayer may file a petition with the tax commission for the amounts asserted in a claim for refund if--

(1) the taxpayer has filed a timely claim for refund with the tax commission,

(2) the taxpayer has not previously filed with the tax commission a timely petition under subsection (b) of this section for the same taxable year unless the petition under this subsection relates to a separate claim for credit or refund properly filed under subsection (f) of section six hundred eighty-seven of this part or relates to a refund or credit first claimed on an amended return for the taxable year, and

(3) either (A) six months have expired since the claim was filed, or (B) the tax commission has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part.

(4) Notwithstanding paragraph three of this subsection, no petition may be filed by a taxpayer claiming a refund of one or more empire zone tax credits for a taxable year beginning on or after January first, two thousand eight and before January first, two thousand nine, until six months have expired after the date on which an empire zone retention certificate was issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis for the tax credit or credits claimed on the return or report.

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

(d) Assertion of deficiency after filing petition.--

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

(2) Petition for refund.-- If the taxpayer files with the tax commission a petition for credit or refund for a taxable year, the tax commission may

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax commission, and within the period in which an assessment would be timely under section six hundred eighty-three, or

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

(3) Opportunity to respond.-- A taxpayer shall be given a reasonable

opportunity to respond to any matters asserted by the tax commission under this subsection.

(4) Restriction on further notices of deficiency. -- If the taxpayer files a petition with the tax commission under this section, no notice of deficiency under section six hundred eighty-one of this part may thereafter be issued by the tax commission for the same tax return, except in case of fraud or with respect to a change or correction required to be reported under section six hundred fifty-nine of this article.

(e) Burden of proof. In any case before the tax commission under this article, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the tax commission:

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

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

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction required to be reported under section six hundred fifty-nine, and of which change or correction the tax commission had no notice at the time it mailed the notice of deficiency; and

(4) whether any person is liable for a penalty under subsection (q) or (r) of section six hundred eighty-five of this article.

(f) Evidence of related federal determination.-- Evidence of a federal determination relating to issues raised in a case before the tax commission under this section shall be admissible, under rules established by the tax commission.

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

§ 690. Review of tax commission decision.--(a) General.--A decision of the tax appeals tribunal shall be subject to judicial review in the manner provided for by section two thousand sixteen of this chapter.

(b) Judicial review exclusive remedy of taxpayer.--The review of a decision of the tax commission provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this article.

(c) Assessment pending review; review bond.--Irrespective of any restrictions on the assessment and collection of deficiencies, the tax commission may assess a deficiency after the expiration of the period specified in subsection (a), notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his application for review is made, has paid the deficiency, has deposited with the tax commission the amount of the deficiency, or has filed with the tax commission a bond (which may be a jeopardy bond under subsection (h) of section six hundred ninety-four) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against him in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency (including interest and other amounts) as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the tax commission is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

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

(e) Date of finality of division of tax appeals determination or decision.--A determination of an administrative law judge in the division of tax appeals shall become final in accordance with

subdivision four of section two thousand ten of this chapter. A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in subsection (a) for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of such decision is served as provided in section two thousand sixteen of this chapter.

§ 691. Mailing rules; holidays; miscellaneous.--(a) Timely mailing.--(1) If any return, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subsection shall apply in the case of postmarks not made by the United States Post Office only

if and to the extent provided by regulations of the tax commission.

(2)(A) Any reference in paragraph one of this subsection to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph one of this subsection to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner finds that any delivery service designated by such secretary is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this article, or may withdraw any such designation if the commissioner finds that a delivery service so designated is inadequate for the needs of the state. Any reference in paragraph one of this subsection to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner and any reference in paragraph one of this subsection to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subsection. If the commissioner finds that any equivalent of registered or certified mail designated by such secretary or the commissioner is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article.

(b) Last known address.--For purposes of this article, a taxpayer's last known address shall be the address given in the last return filed by him, unless subsequently to the filing of such return the taxpayer

shall have notified the tax commission of a change of address.

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

(d) Certificate; unfiled return.--For purposes of this chapter, the certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this article, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

(e) Attorney general; jurisdiction.--The attorney general shall have concurrent jurisdiction with any district attorney in the prosecution of any offenses arising under article thirty-seven of this chapter with respect to the tax imposed under this article.

(f) Voter registration forms.--The commissioner of taxation and finance shall from time to time distribute mail voter registration forms, designed by the state board of elections, that conform to the requirements of subdivision five of section 5-210 of the election law. One such registration form shall be included by the commissioner in each packet of forms and instructions that the commissioner distributes to residents who may be required to file a return pursuant to section six hundred fifty-one of this article.

§ 692. Collection, levy and liens.--(a) Collection procedures.--The taxes imposed by this article shall be collected by the tax commission, and it may establish the mode or time for the collection of any amount due it under this article if not otherwise specified. The tax commission shall, upon request, give a receipt for any sum collected under this article. The tax commission may authorize banks or trust companies which are depositaries or financial agents of the state to receive and give a receipt for any tax imposed under this article in such manner, at such times, and under such conditions as the tax commission may prescribe;

and the tax commission shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the tax commission.

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

(c) Issuance of warrant after notice and demand.--If any person liable under this article for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within twenty-one calendar days after notice and demand therefor is given to such person under subsection (b) of this section (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), the commissioner may within six years after the date of such assessment issue a warrant under the commissioner's official seal directed to the sheriff of any county of the state, or to any officer or employee of the department, commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant and to return such warrant to the commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner and upon failure or refusal to pay such tax or other amount the commissioner may issue a warrant without regard to the twenty-one day period (or ten-day period if applicable) provided in this subsection.

(d) Copy of warrant to be filed and lien to be created.--Any sheriff or officer or employee who receives a warrant under subsection (c) shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment

docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a lien upon the title to and interest in real, personal and other property of the taxpayer. Such lien shall not apply to personal property unless such warrant is filed in the department of state.

(e) Judgment.--When a warrant has been filed with the county clerk the tax commission shall, in the right of the people of the state of New York, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

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

(g) Taxpayer not a resident. Where a notice and demand under subsection (b) shall have been given to a taxpayer who is not then a resident, and it appears to the tax commission that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident, the tax commission may, in accordance with subsection (c), issue a warrant directed to an officer or employee of the department of taxation and finance, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at his last known address, subject to the rules for mailing provided in subsection (a) of section six hundred eighty-one. Such warrant shall command the officer or employee to proceed in Albany county, and he shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the tax commission may authorize the institution of any action or proceeding to collect or enforce the

judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The tax commission may also, in its discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this article against taxpayers who are not residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the tax commission shall deem proper and sufficient.

(h) Action by state for recovery of taxes.--Action may be brought by the attorney general at the instance of the tax commission in the name of the state to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this article within six years prior to the date the action is commenced.

(i) Release of lien.--The tax commission, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may require, may release any property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

§ 693. Transferees.--(a) General.--The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the tax commission under this article, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term transferee includes donee, heir, legatee, devisee and distributee.

(b) Exceptions.--

(1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the

tax commission in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

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

(c) Deceased transferor.--If any person is deceased, the period of limitation for assessment against him shall be the period that would be in effect if he had lived.

(d) Evidence.--Notwithstanding the provisions of subsection (e) of section six hundred ninety-seven the tax commission shall use its powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subsection (e) of section six hundred eighty-nine for rule as to burden of proof.

(e) Notwithstanding the provisions of paragraph one of subsection (e) of section six hundred ninety-seven of this part, the commissioner may

furnish information relating to real property transfers obtained or derived from returns filed pursuant to this article in relation to the real estate transfer tax, to the extent that such information is also required to be reported to the commissioner by section three hundred thirty-three of the real property law and section five hundred seventy-four of the real property tax law and the rules adopted thereunder, provided such information was collected through a combined process established pursuant to an agreement entered into with the commissioner pursuant to paragraph viii of subdivision one-e of section three hundred thirty-three of the real property law. The commissioner may redisclose such information to the extent authorized by section five hundred seventy-four of the real property tax law.

§ 694. Jeopardy assessment.--(a). Authority for making.--If the tax commission believes that the assessment or collection of a deficiency will be jeopardized by delay, it shall, notwithstanding the provisions of section six hundred eighty-one and six hundred ninety-six, immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the tax commission for the payment thereof.

(b) Notice of deficiency.--If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section six hundred eighty-one, then the tax commission shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of tax commission.--The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the tax commission. The tax commission may, at any time before rendering its decision, abate such assessment, or any unpaid portion thereof, to the extent that it believes the assessment to be excessive in amount. The tax commission may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of tax commission.--If the jeopardy assessment is made after the decision of the tax commission is

rendered, such assessment may be made only in respect of the deficiency determined by the tax commission in its decision.

(e) Expiration of right to assess.--A jeopardy assessment may not be made after the decision of the tax commission has become final or after the taxpayer has made an application for review of the decision of the tax commission.

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

(g) Abatement if jeopardy does not exist.--The tax commission may abate the jeopardy assessment if it finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax commission in respect of the deficiency has been rendered or, if no petition is filed with the tax commission, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection.--The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the tax commission, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the

collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section six hundred eighty-one is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

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

(j) Stay of sale of seized property pending tax commission decision.--Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold--

(1) if subsection (b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section six hundred eighty-nine for filing a petition with the tax commission, and

(2) if a petition is filed with the tax commission (whether before or after the making of such jeopardy assessment), prior to the expiration of the period during which the assessment of the deficiency would be

prohibited if subsection (a) were not applicable.

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

(k) Interest.--For the purpose of subsection (a) of section six hundred eighty-four, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year.--If the tax commission finds that a taxpayer designs quickly to depart from this state or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the tax commission shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subsection, the finding of the tax commission made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period.--Notwithstanding the termination of the taxable period of the taxpayer by the tax commission, as provided in subsection (l), the tax commission may reopen such taxable period each time the taxpayer is found by the tax commission to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the tax commission may be reopened by the taxpayer if he files with the tax commission a true and accurate return of taxable income and credits allowed under this article for such taxable period, together with such other information as the tax

commission may by regulations prescribe.

(n) Furnishing of bond where taxable year is closed by the tax commission.--Payment of taxes shall not be enforced by any proceedings under the provisions of subsection (l) prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the tax commission, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any income taxes for prior years.

§ 695. Criminal penalties; cross-reference.--For criminal penalties, see article thirty-seven of this chapter.

§ 696. Income taxes of members of armed forces, astronauts, and victims of certain terrorist attacks.--(a) Time to be disregarded.--In the case of an individual serving in the armed forces of the United States, or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or when deployed outside the United States away from the individual's permanent duty station while participating in an operation that is either designated by the United States secretary of defense as a "contingency operation" or which became a contingency operation due to operation of law during the period of such contingency operation, or hospitalized inside or outside the state as a result of injury received while serving in such an area or operation during such time, the period of service in such area or operation, plus the period of continuous hospitalization inside or outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this article, in respect of the income tax liability (including any interest, penalty, or addition to the tax) of such individual --

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of income tax (except withholding tax);

(B) payment of any income tax (except withholding tax) or any installment thereof or of any other liability to the state, in respect thereof;

(C) filing a petition with the tax commission for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the tax commission;

(D) allowance of a credit or refund of income tax;

(E) filing a claim for credit or refund of income tax;

(F) assessment of income tax;

(G) giving or making any notice or demand for the payment of any income tax, or with respect to any liability to the state in respect of income tax;

(H) collection, by the tax commission, by levy or otherwise of the amount of any liability in respect of income tax;

(I) bringing suit by the state, or any officer, on its behalf, in respect of any liability in respect of income tax; and

(J) any other act required or permitted under this article or specified in regulations prescribed under this section by the tax commission.

(2) The amount of any credit or refund.

(b) Special rule for overpayments. -- (1) Subsection (a) of this section shall not apply for purposes of determining the amount of interest on any overpayment of tax.

(2) If an individual is entitled to the benefits of subsection (a) of this section with respect to any return, amended return, or claim for credit or refund, and such return, amended return or claim is timely filed (determined after the application of such subsection), paragraph three of subsection (a) and subsection (c) of section six hundred eighty-eight of this article shall not apply.

(c) Action taken before ascertainment of right to benefits.--The assessment or collection of the tax imposed by this article or of any liability to the state in respect of such tax, or any action or proceeding by or on behalf of the state in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

(d) Members of armed forces dying in action.--In the case of any person who dies while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subsection (a), or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this article shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day so served in a combat zone, and no returns shall be required in behalf of such person or his or her estate for such year; and the tax for any such taxable year which is unpaid at the date of death, including interest, additions to tax and penalties, if any, shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to the surviving spouse.

(e) Treatment of individuals performing Desert Shield services. -- (1) Any individual who performed Desert Shield services shall be entitled to the benefits of subsections (a) and (b) of this section in the same manner as if such services were services referred to in subsection (a) of this section.

(2) For purposes of this subsection, the term "Desert Shield services" means any services in the armed forces of the United States or in support of such armed forces if

(A) such services are performed in the area designated by the president of the United States as the "Persian Gulf Desert Shield area", and

(B) such services are performed during the period beginning on August second, nineteen hundred ninety, and ending on the date on which any portion of the area referred to in subparagraph (A) of this paragraph is designated by the president as a combat zone pursuant to section one hundred twelve of the internal revenue code.

(f) Relief for personnel under hostile fire. -- For purposes of this section, members of the armed forces of the United States who perform military service in an area outside an area designated by the president of the United States by executive order as a "combat zone", which

service is in direct support of military operations in such zone and is performed under conditions which qualify such members for hostile fire pay, as authorized under subdivision (a) of section nine of the federal uniformed services pay act of nineteen hundred sixty-three, shall, during the period of such qualifying service, be deemed to have served in such combat zone.

(g) Application to spouse.-- The provisions of subsections (a), (b), (c), (e) and (f) of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a) of this section; provided, however, that such subsections shall not apply for any spouse for any taxable year beginning more than two years after the date designated under section one hundred twelve of the internal revenue code as the date of termination of combatant activities in a combat zone.

(h) Individuals dying as a result of certain attacks and astronauts.--(1) General. In the case of a specified terrorist victim or astronaut, any tax imposed by this article shall not apply--

(A) with respect to the taxable year in which falls the date of death; and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury referred to in paragraph three of this subsection were incurred.

(2) Taxation of certain benefits. Paragraph one of this subsection shall not apply to the amount of any tax imposed by this article which would be computed by only taking into account the items of income, gain, or other amounts determined by the United States secretary of the treasury to be taxable pursuant to paragraph 692(d)(3) of the internal revenue code.

(3) Specified terrorist victim. For purposes of this subsection, the term "specified terrorist victim" means any decedent who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on September eleventh, two thousand one, provided, however, such term shall not include any individual identified by the attorney general of the United States to have been a participant or conspirator in any such attack or a representative of such an individual.

(4) Astronaut. For purposes of this subsection, the term "astronaut"

means any astronaut whose death occurs in the line of duty after December thirty-first, two thousand two.

(i) Collection period after assessment not extended as a result of hospitalization. With respect to any period of continuous hospitalization described in subsection (a) and the next one hundred eighty days thereafter, subsection (a) shall not apply to the collection, by the tax commission, by levy or otherwise of the amount of any liability pursuant to section six hundred ninety-two of this article.

§ 697. General powers of tax commission.--(a) General.--The tax commission shall administer and enforce the tax imposed by this article and it is authorized to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of this article. The tax commission may divide the state into districts in each of which a branch office may be maintained by it, but in no case shall a county be divided in forming a district.

(b) Examination of books and witnesses.--(1) The tax commission for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

(2) The tax commission may take any action under paragraph one of this subdivision to inquire into the commission of an offense connected with the administration or enforcement of this article, provided, however, that notwithstanding the provisions of section one hundred seventy-four of this chapter no such action shall be taken when a referral by the department or the tax commission to the attorney general, a district attorney or any other prosecutorial agency is in effect. Provided,

however, the tax commission shall have power, during the period when such referral is in effect, to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, where such books, papers, records or memoranda are in its possession, or where such books, papers, records or memoranda are in the possession of the attorney general, district attorney or other prosecutorial agency to which such referral is made.

(c) Abatement authority.--The tax commission, of its own motion, may abate any small unpaid balance of an assessment of income tax, or any liability in respect thereof, if the tax commission determines under uniform rules prescribed by it that the administration and collection costs involved would not warrant collection of the amount due. It may also abate, of its own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subsection shall be filed by a taxpayer.

(d) Special refund authority.--Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller.

(e) Secrecy requirement and penalties for violation.--(1) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, any person engaged or retained by such department on an independent contract basis, any depository to which any return may be delivered as provided in subsection (h) or (i) of this section, any officer or employee of such depository, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished,

to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this article, under section one hundred seventy-one-a or section one hundred seventy-one-h of this chapter, or under this article and article eighteen of the labor law.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article, or under the provisions of this article and article eighteen of the labor law, when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The commissioner may, nevertheless, publish a copy or a summary of any decision rendered after the hearing required under section six hundred eighty-nine of this article.

(3) Nothing herein shall be construed to prohibit the department, its officers or employees from furnishing information to the office of temporary and disability assistance relating to the payment of the credit for certain household and dependent care services necessary for gainful employment under subsection (c) of section six hundred six of this article, the New York state child and dependent care credit under subsection (c-2) of section six hundred six of this article, and the earned income credit under subsection (d) of section six hundred six of this article and the enhanced earned income credit under subsection (d-1) of section six hundred six of this article, or pursuant to a local law enacted by a city having a population of one million or more pursuant to subsection (f) of section thirteen hundred ten of this chapter, only to the extent necessary to calculate qualified state expenditures under paragraph seven of subdivision (a) of section four hundred nine of the federal social security act or to document the

proper expenditure of federal temporary assistance for needy families funds under section four hundred three of such act. The office of temporary and disability assistance may redisclose such information to the United States department of health and human services only to the extent necessary to calculate such qualified state expenditures or to document the proper expenditure of such federal temporary assistance for needy families funds. Nothing herein shall be construed to prohibit the delivery by the commissioner to a commissioner of jurors, appointed pursuant to section five hundred four of the judiciary law, or, in counties within cities having a population of one million or more, to the county clerk of such county, or to the clerk of the court or jury administrator of a United States district court appointed pursuant to title twenty-eight of the United States Code, section 1836(b)(2), of a mailing list of individuals to whom income tax forms are mailed by the commissioner for the sole purpose of compiling a list of prospective jurors as provided in article sixteen of the judiciary law or title twenty-eight of the United States Code. Provided, however, such delivery shall only be made pursuant to an order of the chief administrator of the courts, appointed pursuant to section two hundred ten of the judiciary law or an order of a chief judge of any United States district court in New York State. No such order may be issued unless such chief administrator or chief judge of such United States district court is satisfied that such mailing list is needed to compile a proper list of prospective jurors for the county or such United States district court for which such order is sought and that, in view of the responsibilities imposed by the various laws of the state on the department, it is reasonable to require the commissioner to furnish such list. Such order shall provide that such list shall be used for the sole purpose of compiling a list of prospective jurors and that such commissioner of jurors, or such county clerk, or clerk of the court or jury administrator of such United States district court shall take all necessary steps to insure that the list is kept confidential and that there is no unauthorized use or disclosure of such list. Furthermore, nothing herein shall be construed to prohibit the delivery to a taxpayer or their duly authorized representative of a certified copy of any return or report filed in connection with their tax or to prohibit the publication of statistics so classified as to prevent the identification

of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer or of any employer filed under section one hundred seventy-one-h of this chapter, where such taxpayer or employer shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter or under this chapter and article eighteen of the labor law has been recommended by the commissioner, the commissioner of labor with respect to unemployment insurance matters, or the attorney general or has been instituted, or the inspection of the reports or returns required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a taxpayer under this article, or the furnishing to the state department of labor of unemployment insurance information obtained or derived from quarterly combined withholding, wage reporting and unemployment insurance returns required to be filed by employers pursuant to paragraph four of subsection (a) of section six hundred seventy-four of this article, for purposes of administration of such department's unemployment insurance program, employment services program, federal and state employment and training programs, employment statistics and labor market information programs, worker protection programs, federal programs for which the department has administrative responsibility or for other purposes deemed appropriate by the commissioner of labor consistent with the provisions of the labor law, and redisclosure of such information in accordance with the provisions of sections five hundred thirty-six and five hundred thirty-seven of the labor law or any other applicable law, or the furnishing to the state office of temporary and disability assistance of information obtained or derived from New York state personal income tax returns as described in paragraph (b) of subdivision two of section one hundred seventy-one-g of this chapter for the purpose of reviewing support orders enforced pursuant to title six-A of article three of the social services law to aid in the determination of whether such orders should be adjusted, or the furnishing of information obtained from the reports required to be submitted by employers regarding newly hired or re-hired employees pursuant to section one hundred seventy-one-h of this chapter to the state office of temporary

and disability assistance, the state department of health, the state department of labor and the workers' compensation board for purposes of administration of the child support enforcement program, verification of individuals' eligibility for one or more of the programs specified in subsection (b) of section eleven hundred thirty-seven of the federal social security act and for other public assistance programs authorized by state law, and administration of the state's employment security and workers' compensation programs, and to the national directory of new hires established pursuant to section four hundred fifty-three-A of the federal social security act for the purposes specified in such section, or the furnishing to the state office of temporary and disability assistance of the amount of an overpayment of income tax and interest thereon certified to the comptroller to be credited against past-due support pursuant to section one hundred seventy-one-c of this chapter and of the name and social security number of the taxpayer who made such overpayment, or the disclosing to the commissioner of finance of the city of New York, pursuant to section one hundred seventy-one-l of this chapter, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a city of New York tax warrant judgment debt and of the name and social security number of the taxpayer who made such overpayment, or the furnishing to the New York state higher education services corporation of the amount of an overpayment of income tax and interest thereon certified to the comptroller to be credited against the amount of a default in repayment of any education loan debt, including judgments, owed to the federal or New York state government that is being collected by the New York state higher education services corporation, and of the name and social security number of the taxpayer who made such overpayment, or the furnishing to the state department of health of the information required by paragraph (f) of subdivision two and subdivision two-a of section two thousand five hundred eleven of the public health law and by subdivision eight of section three hundred sixty-six-a of the social services law, or the furnishing to the state university of New York or the city university of New York respectively or the attorney general on behalf of such state or city university the amount of an overpayment of income tax and interest thereon certified to the comptroller to be credited against the amount of a default in repayment of a state university loan pursuant to section

one hundred seventy-one-e of this chapter and of the name and social security number of the taxpayer who made such overpayment, or the disclosing to a state agency, pursuant to section one hundred seventy-one-f of this chapter, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a past-due legally enforceable debt owed to such agency and of the name and social security number of the taxpayer who made such overpayment, or the furnishing of employee and employer information obtained through the wage reporting system, pursuant to section one hundred seventy-one-a of this chapter, as added by chapter five hundred forty-five of the laws of nineteen hundred seventy-eight, to the state office of temporary and disability assistance, the department of health or to the state office of the medicaid inspector general for the purpose of verifying eligibility for and entitlement to amounts of benefits under the social services law or similar law of another jurisdiction, locating absent parents or other persons legally responsible for the support of applicants for or recipients of public assistance and care under the social services law and persons legally responsible for the support of a recipient of services under section one hundred eleven-g of the social services law and, in appropriate cases, establishing support obligations pursuant to the social services law and the family court act or similar provision of law of another jurisdiction for the purpose of evaluating the effect on earnings of participation in employment, training or other programs designed to promote self-sufficiency authorized pursuant to the social services law by current recipients of public assistance and care and by former applicants and recipients of public assistance and care, (except that with regard to former recipients, information which relates to a particular former recipient shall be provided with client identifying data deleted), to the state office of temporary and disability assistance for the purpose of determining the eligibility of any child in the custody, care and custody or custody and guardianship of a local social services district or of the office of children and family services for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act by providing information with respect to the parents, the stepparents, the child and the siblings of the child who were living in the same household as such child during the month that

the court proceedings leading to the child's removal from the household were initiated, or the written instrument transferring care and custody of the child pursuant to the provisions of section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law was signed, provided however that the office of temporary and disability assistance shall only use the information obtained pursuant to this subdivision for the purpose of determining the eligibility of such child for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act, and to the state department of labor, or other individuals designated by the commissioner of labor, for the purpose of the administration of such department's unemployment insurance program, employment services program, federal and state employment and training programs, employment statistics and labor market information programs, worker protection programs, federal programs for which the department has administrative responsibility or for other purposes deemed appropriate by the commissioner of labor consistent with the provisions of the labor law, and redisclosure of such information in accordance with the provisions of sections five hundred thirty-six and five hundred thirty-seven of the labor law, or the furnishing of information, which is obtained from the wage reporting system operated pursuant to section one hundred seventy-one-a of this chapter, as added by chapter five hundred forty-five of the laws of nineteen hundred seventy-eight, to the state office of temporary and disability assistance so that it may furnish such information to public agencies of other jurisdictions with which the state office of temporary and disability assistance has an agreement pursuant to paragraph (h) or (i) of subdivision three of section twenty of the social services law, and to the state office of temporary and disability assistance for the purpose of fulfilling obligations and responsibilities otherwise incumbent upon the state department of labor, under section one hundred twenty-four of the federal family support act of nineteen hundred eighty-eight, by giving the federal parent locator service, maintained by the federal department of health and human services, prompt access to such information as required by such act, or to the state department of health to verify eligibility under the child health insurance plan pursuant to subdivisions two and two-a of section two thousand five hundred eleven of the public health law, to verify

eligibility under the medical assistance and family health plus programs pursuant to subdivision eight of section three hundred sixty-six-a of the social services law, and to verify eligibility for the program for elderly pharmaceutical insurance coverage under title three of article two of the elder law, or to the office of vocational and educational services for individuals with disabilities of the education department, the commission for the blind and any other state vocational rehabilitation agency, for purposes of obtaining reimbursement from the federal social security administration for expenditures made by such office, commission or agency on behalf of disabled individuals who have achieved economic self-sufficiency or to the higher education services corporation for the purpose of assisting the corporation in default prevention and default collection of education loan debt, including judgments, owed to the federal or New York state government; provided, however, that such information shall be limited to the names, social security numbers, home and/or business addresses, and employer names of defaulted or delinquent student loan borrowers, or to the office of the state comptroller for purposes of verifying the income of a retired member of a retirement system or pension plan administered by the state or any of its political subdivisions who returns to public employment.

Provided, however, that with respect to employee information the office of temporary and disability assistance shall only be furnished with the names, social security account numbers and gross wages of those employees who are (A) applicants for or recipients of benefits under the social services law, or similar provision of law of another jurisdiction (pursuant to an agreement under subdivision three of section twenty of the social services law) or, (B) absent parents or other persons legally responsible for the support of applicants for or recipients of public assistance and care under the social services law or similar provision of law of another jurisdiction (pursuant to an agreement under subdivision three of section twenty of the social services law), or (C) persons legally responsible for the support of a recipient of services under section one hundred eleven-g of the social services law or similar provision of law of another jurisdiction (pursuant to an agreement under subdivision three of section twenty of the social services law), or (D) employees about whom wage reporting system information is being

furnished to public agencies of other jurisdictions, with which the state office of temporary and disability assistance has an agreement pursuant to paragraph (h) or (i) of subdivision three of section twenty of the social services law, or (E) employees about whom wage reporting system information is being furnished to the federal parent locator service, maintained by the federal department of health and human services, for the purpose of enabling the state office of temporary and disability assistance to fulfill obligations and responsibilities otherwise incumbent upon the state department of labor, under section one hundred twenty-four of the federal family support act of nineteen hundred eighty-eight, and, only if, the office of temporary and disability assistance certifies to the commissioner that such persons are such applicants, recipients, absent parents or persons legally responsible for support or persons about whom information has been requested by a public agency of another jurisdiction or by the federal parent locator service and further certifies that in the case of information requested under agreements with other jurisdictions entered into pursuant to subdivision three of section twenty of the social services law, that such request is in compliance with any applicable federal law. Provided, further, that where the office of temporary and disability assistance requests employee information for the purpose of evaluating the effects on earnings of participation in employment, training or other programs designed to promote self-sufficiency authorized pursuant to the social services law, the office of temporary and disability assistance shall only be furnished with the quarterly gross wages (excluding any reference to the name, social security number or any other information which could be used to identify any employee or the name or identification number of any employer) paid to employees who are former applicants for or recipients of public assistance and care and who are so certified to the commissioner by the commissioner of the office of temporary and disability assistance. Provided, further, that with respect to employee information, the department of health shall only be furnished with the information required pursuant to the provisions of paragraph (f) of subdivision two and subdivision two-a of section two thousand five hundred eleven of the public health law and subdivision eight of section three hundred sixty-six-a of the social services law, with respect to those individuals whose eligibility under

the child health insurance plan, medical assistance program, and family health plus program is to be determined pursuant to such provisions and with respect to those members of any such individual's household whose income affects such individual's eligibility and who are so certified to the commissioner or by the department of health. Provided, further, that wage reporting information shall be furnished to the office of vocational and educational services for individuals with disabilities of the education department, the commission for the blind and any other state vocational rehabilitation agency only if such office, commission or agency, as applicable, certifies to the commissioner that such information is necessary to obtain reimbursement from the federal social security administration for expenditures made on behalf of disabled individuals who have achieved self-sufficiency. Reports and returns shall be preserved for three years and thereafter until the commissioner orders them to be destroyed.

(3-a) Notwithstanding the provisions of paragraph one of this subsection, the commissioner may disclose to a taxpayer or a taxpayer's related member, as defined in subsection (r) of section six hundred twelve of this article, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner under this chapter.

(4) (A) Any officer or employee of the state who willfully violates the provisions of this subsection shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

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

(f) Cooperation with the United States and other states.-- Notwithstanding the provisions of subsection (e), the tax commission may permit the secretary of the treasury of the United States or his delegates, or the proper tax officer of any state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect any return filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply him with information concerning an item

contained in any such return, or disclosed by any investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the commissioner of internal revenue or his authorized representative such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury of the United States or his delegates, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his delegates. Where the commissioner of taxation and finance has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

(f-1) Cooperation with investigations by certain committees of the United States Congress.--(1) Notwithstanding the provisions of subsection (e) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year reports or returns specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined

in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; provided however that, prior to furnishing any report or return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such report or return, and any social security numbers, account numbers and residential address information.

(2) No reports or returns shall be furnished pursuant to this subsection unless the chairperson of the requesting committee certifies in writing that such reports or returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested reports or returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

(g) Cooperation with the cities of the state of New York. Notwithstanding the provisions of subsection (e), the tax commission may permit the proper city officer of any city of the state of New York imposing a personal income tax upon the incomes of residents, or an unincorporated business income tax, or an earnings tax on nonresidents, or the authorized representative of any such officer, to inspect any return filed under this article, or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two), or may furnish to such officer or his authorized

representative an abstract of any such return or supply him with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two), but such permission shall be granted or such information furnished to such officer or his representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or the legal representative of such city such returns filed under this article or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two) and other tax information, as he may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his delegate, provided the local law of such city grants substantially similar powers to such city officer or his delegate. Where the commissioner of taxation and finance has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

(h) Withholding returns.--Notwithstanding the provisions of subsection (e) of this section the tax commission in its discretion, when making deposits, pursuant to section six hundred ninety-eight, of taxes withheld by employers, may deliver to the depository the withholding returns filed by such employers as provided in section six hundred seventy-four, for the purpose of insuring that all money so deposited shall be correctly credited to taxpayers' accounts.

(i) Filing returns and making payments to depository banks.--Notwithstanding the provisions of subsection (e) of this section, the tax commission, in its discretion, may require or permit any or all individuals, estates or trusts liable for any tax imposed by this article, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this article to banks, banking

houses or trust companies designated by the tax commission and to file reports and returns which such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section six hundred ninety-eight.

(j) Authority to set interest rates.--(1) The commissioner shall set the overpayment and underpayment rates of interest to be paid pursuant to sections six hundred eighty-four, six hundred eighty-five and six hundred eighty-eight of this part, but if no such rates of interest are set, such overpayment rate shall be deemed to be set at six percent per annum and such underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such rates shall be the rates prescribed in paragraphs two and four of this subsection, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(2) Rates of interest. (A) Overpayment rate. The overpayment rate of interest set under this subsection shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subsection, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate of interest set under this subsection shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subsection, plus (ii) five and one-half percentage points.

(3) Federal short-term rate. For purposes of this subsection:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate

shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clauses (ii) and (iii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for individual estimated tax. In determining the addition to tax under subsection (c) of section six hundred eighty-five for failure to pay estimated tax for any taxable year, the federal short-term rate which applies during the third month following the taxable year shall also apply during the first fifteen days of the fourth month following such taxable year.

(iii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Notwithstanding the provisions of paragraph two of this subsection to the contrary, in the case of interest payable by an employer with respect to income taxes required to be withheld and paid over by him pursuant to the provisions of part five of this article and with respect to interest payable to an employer pursuant to subsection (c) of section six hundred eighty-six, the rates of interest prescribed by this section shall be the overpayment and underpayment rates of interest prescribed in paragraph two of subsection (e) of section one thousand ninety-six of this chapter.

(5) In computing the amount of any interest required to be paid under this article by the commissioner of taxation and finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subsection (c) of section six hundred eighty-five.

(6) Publication of interest rates. The commissioner of taxation and finance shall publish the interest rates set under this subsection on the website of the department of taxation and finance. Immediately following such publication, the commissioner shall cause such interest

rates to be published in the section for miscellaneous notices in the state register and give other appropriate general notice of such interest rates. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(7) Cross-reference. For provisions relating to the power of the commissioner of taxation and finance to abate small amounts of interest, see subsection (c) of this section.

(k) (1) For school aid payable in the school years nineteen hundred eighty-five--eighty-six through nineteen hundred ninety-three--ninety-four, notwithstanding the provisions of subsection (e) of this section, the department or authorized vendor contracted by the department shall furnish, as required pursuant to subdivision twenty-fifth of section one hundred seventy-one of this chapter, to the commissioner of education and school district superintendents of identified school districts and district superintendents appointed pursuant to section nineteen hundred fifty of the education law, having an identified school district within their supervisory district, an ordered listing, for such identified school districts participating in the temporary school district address review validation and correction process, of the permanent resident address of each taxpayer who has filed a personal income tax return with the department with a school district code which indicates that the taxpayer is a resident of such school district at the close of the taxable year for which the return was filed.

(2) For school aid payable in school years nineteen hundred eighty-eight--eighty-nine through nineteen hundred ninety-three--ninety-four, notwithstanding the provisions of subsection (e) of this section, a receiver school district may review the ordered listing wherein an identified school district that participated in the temporary school district address review validation and correction process identified personal income tax returns as belonging to such receiver district. The information provided to a receiving district pursuant to this subdivision and subdivision twenty-fifth of section one hundred seventy-one of this chapter shall be used solely for the purpose of verifying the legal residence and school district of a taxpayer whose

return was identified as belonging to a receiver school district by an identified school district.

(4) Notwithstanding the provisions of subsection (e) of this section, the department or an authorized vendor contracted by the department shall furnish, as required pursuant to subdivision twenty-fifth of section one hundred seventy-one of this chapter, to the superintendents of schools of identified school districts and district superintendents of schools appointed pursuant to section nineteen hundred fifty of the education law, having an identified school district within their supervisory district, an ordered listing, for such identified school districts electing to participate in the appeals process for a limited school district address review validation and correction process.

(5) The information provided pursuant to this section and subdivision twenty-fifth of section one hundred seventy-one of this chapter shall be used solely for the purpose of verifying the legal residence and school district of a taxpayer in determining the distribution of state aid for education and such information may only be disclosed by such commissioner, superintendents and authorized vendor contracted by the department for such purposes to employees of the state education department, and to employees under the control of such superintendents. In addition, notwithstanding the provisions of subsection (e) of this section, the department may furnish to an authorized vendor contracted by the department the permanent resident address and school code data necessary for the implementation of the temporary school district address review validation and correction process, the pilot computerized address match and income verification project, or the permanent computerized statewide school district address match and income verification system pursuant to subdivision twenty-fifth of section one hundred seventy-one of this chapter. Any violation of the provisions of this section shall be punishable in the manner provided for in subsection (e) of this section. Any information obtained by any agency or person pursuant to the provisions of this section shall not be deemed a "record", as defined in subdivision four of section eighty-six of the public officers law.

(1) Exchange of information within the state department of labor. (1) Notwithstanding any provision of law to the contrary, the state department of labor shall furnish to the department information required

from employers pursuant to article eighteen of the labor law, and the department shall furnish to the state department of labor, or other individuals designated by the commissioner of labor who are engaged in purposes deemed appropriate by the commissioner of labor consistent with the provisions of the labor law, withholding tax information obtained or derived pursuant to part V of this article, or pursuant to equivalent provisions enacted under the authority of article thirty, thirty-A or thirty-B of this chapter, and taxpayer identification information acquired under any of the provisions of this chapter, for tax administration and employment security program purposes.

(2)(A) For purposes of this subsection, the term "tax administration purposes" means and includes:

- (i) the administration, management, conduct, direction, and supervision of the execution and application of any tax, special assessment, fee or other imposition administered by the commissioner,
- (ii) the development and formulation of state policy relating to existing or proposed tax laws and related statutes, and
- (iii) the assessment, collection, enforcement, litigation, publication and statistical gathering functions under such laws or statutes.

(B) For purposes of this subsection, the term "employment security and public assistance work program purposes" means the unemployment insurance programs administered by the commissioner of labor pursuant to the labor law and those employment and training programs with respect to which the department of labor has administrative, reporting, monitoring, or evaluating responsibilities.

(3) Information obtained by the department from the state department of labor pursuant to the provisions of this subsection shall be confidential, and shall not be disclosed or redisclosed except for tax administration and employment security and public assistance program purposes.

(4) The commissioner shall enter into an agreement with the commissioner of the state department of labor in order to ensure the confidentiality of tax and unemployment insurance information and that such information is disclosed only for authorized purposes in connection with the implementation of the provisions of this subsection and those provisions of subsection (e) of this section relating to unemployment insurance information obtained or derived by the department from

quarterly combined withholding, wage reporting and unemployment insurance returns required to be filed pursuant to paragraph four of subsection (a) of section six hundred seventy-four of this article.

(m) Disclosure of collection activities with respect to joint return.--Notwithstanding the provisions of subsection (e) of this section, if any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the commissioner shall disclose in writing to the individual making the request whether the commissioner has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of the expiration of time within which to issue a warrant under subsection (c) of section six hundred ninety-two of this article or within which to collect such tax by execution and levy or by court proceeding.

(n) Disclosure of certain information where more than one person is subject to penalty.--If the commissioner determines that a person is liable for a penalty under subsection (g) of section six hundred eighty-five of this article with respect to any failure, upon request in writing of such person, the commissioner shall disclose in writing to such person (1) the name of any other person whom the commissioner has determined to be liable for such penalty with respect to such failure, and (2) whether the commissioner has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

(o) Exchange of information with the office of temporary and disability assistance.--Notwithstanding any provision of law to the contrary, the department shall furnish to the office of temporary and disability assistance, or as designated by the commissioner of the office of children and family services, to employees of a local social services district who are engaged in the process of determining the eligibility of children in the custody, care and custody or custody and guardianship of a local social services district for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act, the name, social security

number and wages of the parents, the stepparents, the child and the siblings of the child who were living in the same household as a child who is in the custody, care and custody or custody and guardianship of a local social services district or of the office of children and family services during the month that the court proceedings leading to the child's removal from the household were initiated, or the written instrument transferring care and custody of the child pursuant to the provisions of section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law was signed; provided however, that the office of temporary and disability assistance or such social services district shall only use the information obtained pursuant to this subsection for the purpose of determining the eligibility of such child for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act.

§ 698. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. Notwithstanding the foregoing, unemployment insurance contributions and payments and aggregate withholding taxes collected or received by the commissioner from employers in a single remittance accompanying the quarterly combined withholding, wage reporting and unemployment insurance returns required by paragraph four of subsection (a) of section six hundred seventy-four of this article shall, if necessary, be deposited into an account to be maintained jointly by the department and the department of labor at such responsible bank, banking house or trust company as may be designated by the comptroller. The comptroller shall require adequate security from such depository. Such departments shall determine the proper allocation of the monies in such account as between unemployment insurance contributions and payments and aggregate withholding taxes. Unemployment insurance contributions and payments shall then be deposited and disposed of pursuant to the provisions of title four of article eighteen of the labor law, and aggregate withholding taxes shall be deposited and disposed of pursuant to the provisions of sections one

hundred seventy-one-a, thirteen hundred thirteen and thirteen hundred thirty-three of this chapter, as applicable.

§ 699. Transition provisions. For purposes of implementation of changes in tax rate and in amounts of taxable income subject to each rate applicable to any taxable year (whether or not such taxable year is a taxable year of twelve months) beginning in nineteen hundred ninety-five and nineteen hundred ninety-six, under subsections (a), (b) or (c) of section six hundred one, the tax is imposed and determined for each such taxable year in accordance with the following provisions:

(1) Taxable years beginning in nineteen hundred ninety-six. Paragraph two of subsections (a), (b) and (c) of section six hundred one, relating to imposition of the income tax for taxable years beginning in nineteen hundred ninety-six, establishes a new tax rate schedule effective on the first day of the taxpayer's taxable year, except that the highest rate of tax of seven percent shall not take effect until the first day of the fourth month of the taxpayer's taxable year beginning in nineteen hundred ninety-six. For purposes of implementation of the tax for taxable years beginning in nineteen hundred ninety-six, the highest rate of tax in each tax rate schedule shall be administered for the entire taxable year at the rate of 7.125 percent on New York taxable income in excess of (A) twenty-six thousand dollars in the case of married individuals filing joint returns and surviving spouses, (B) seventeen thousand dollars in the case of heads of households and (C) thirteen thousand dollars in the case of unmarried individuals, married individuals filing separate returns and estates and trusts.

(2) Taxable years beginning in nineteen hundred ninety-five. Paragraph three of subsections (a), (b) and (c) of section six hundred one, relating to imposition of the income tax for taxable years beginning in nineteen hundred ninety-five, establishes a new tax rate schedule effective on the first day of the taxpayer's taxable year, except that the highest rate of tax of seven and one-half percent shall not take effect until the first day of the fourth month of the taxpayer's taxable year beginning in nineteen hundred ninety-five. For purposes of implementation of the tax, the highest rate of tax in each tax rate schedule shall be administered for the entire taxable year at the rate

of 7.59375 percent on New York taxable income (A) in excess of twenty-five thousand dollars in the case of married individuals filing joint returns and surviving spouses, (B) in excess of nineteen thousand dollars in the case of heads of households and (C) in excess of twelve thousand five hundred dollars in the case of unmarried individuals, married individuals filing separate returns and estates and trusts.

ARTICLE 23
**METROPOLITAN COMMUTER TRANSPORTATION
MOBILITY TAX**

Section 800. Definitions.

- 801. Imposition of tax and rate.
- 802. Pass through of tax prohibited.
- 803. Exemption override.
- 804. Payment of tax.
- 805. Deposit and disposition of revenue.
- 806. Procedural provisions.
- 807. Enforcement with other taxes.

§ 800. Definitions. For the purposes of this article:

(a) Metropolitan commuter transportation district. The metropolitan commuter transportation district ("MCTD") means the area of the state included in the district created and governed by section twelve hundred sixty-two of the public authorities law. The MCTD shall have two zones:

(1) MCTD zone one shall be comprised of the counties of Bronx, Kings, New York, Queens, and Richmond.

(2) MCTD zone two shall be comprised of the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

(b) Employer. Employer means an employer required by section six hundred seventy-one of this chapter to deduct and withhold tax from wages, other than

(1) any agency or instrumentality of the United States;

(2) the United Nations;

(3) an interstate agency or public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada;

(4) Any eligible educational institution. An "eligible educational institution" shall mean any public school district, a board of cooperative educational services, a public elementary or secondary school, a school approved pursuant to article eighty-five or eighty-nine of the education law to serve students with disabilities of school age, or a nonpublic elementary or secondary school that provides instruction in grade one or above, all public library systems as defined in subdivision one of section two hundred seventy-two of the education law, and all public and free association libraries as such terms are defined in subdivision two of section two hundred fifty-three of the education law; or

(5) any local government employer whose covered employees are within MCTD zone two.

(c) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

(d) Covered employee. Covered employee means an employee who is employed within the MCTD.

(e) Net earnings from self-employment. Net earnings from self-employment has the same meaning as in section 1402 of the internal revenue code, provided, however, that for purposes of determining whether the exclusion pursuant to paragraph 13 of subsection (a) of section 1402 of the internal revenue code applies, an individual shall not be considered a limited partner if the individual, directly or indirectly, takes part in the control, or participates in the management or operations of the partnership such that the individual is not a passive investor, regardless of the individual's title or characterization in a partnership or operating agreement.

(f) Local government employer. Local government employer means (1) a county, city, town, village or any other political subdivision or civil division of the state, (2) a public improvement or special district, (3) a public authority, commission, community college, or public benefit corporation, (4) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, or (5) in the case of a county sheriff's office in those counties where the office of sheriff is an elected position, both the

county and the sheriff, shall be designated as a joint public employer for all purposes of this article.

§ 801. Imposition of tax and rate. (a) For the sole purpose of providing an additional stable and reliable dedicated funding source for the metropolitan transportation authority and its subsidiaries and affiliates to preserve, operate and improve essential transit and transportation services in the metropolitan commuter transportation district, a tax is hereby imposed on employers and individuals as follows: (1) (A) For tax quarters beginning before July first, two thousand twenty-five, employers who engage in business within the MCTD, in the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, the tax is imposed at a rate of (i) eleven hundredths (.11) percent of the payroll expense for employers with payroll expense greater than three hundred twelve thousand five hundred dollars and no greater than three hundred seventy-five thousand dollars in any calendar quarter, (ii) twenty-three hundredths (.23) percent of the payroll expense for employers with payroll expense greater than three hundred seventy-five thousand dollars and no greater than four hundred thirty-seven thousand five hundred dollars in any calendar quarter, and (iii) thirty-four hundredths (.34) percent of the payroll expense for employers with payroll expense in excess of four hundred thirty-seven thousand five hundred dollars in any calendar quarter. If the employer is a professional employer organization, as defined in section nine hundred sixteen of the labor law, the employer's tax shall be calculated by determining the payroll expense attributable to each client who has entered into a professional employer agreement with such organization and the payroll expense attributable to such organization itself, multiplying each of those payroll expense amounts by the applicable rate set forth in this paragraph and adding those products together.

(B) For tax quarters beginning before July first, two thousand twenty-five, employers who engage in business within the MCTD, in the counties of Bronx, Kings, New York, Queens, and Richmond, the tax is imposed at a rate of (i) eleven hundredths (.11) percent of the payroll expense for employers with payroll expense greater than three hundred twelve thousand five hundred dollars and no greater than three hundred

seventy-five thousand dollars in any calendar quarter, (ii) twenty-three hundredths (.23) percent of the payroll expense for employers with payroll expense greater than three hundred seventy-five thousand dollars and no greater than four hundred thirty-seven thousand five hundred dollars in any calendar quarter, and (iii) sixty hundredths (.60) percent of the payroll expense for employers with payroll expense in excess of four hundred thirty-seven thousand five hundred dollars in any calendar quarter. If the employer is a professional employer organization, as defined in section nine hundred sixteen of the labor law, the employer's tax shall be calculated by determining the payroll expense attributable to each client who has entered into a professional employer agreement with such organization and the payroll expense attributable to such organization itself, multiplying each of those payroll expense amounts by the applicable rate set forth in this paragraph and adding those products together.

(C) For tax quarters beginning on and after July first, two thousand twenty-five, for employers within MCTD zone one, the tax is imposed at a rate of (i) fifty-five thousandths (.055) percent of the payroll expense for employers with payroll expense greater than three hundred twelve thousand five hundred dollars and no greater than three hundred seventy-five thousand dollars in any calendar quarter, (ii) one hundred fifteen thousandths (.115) percent of the payroll expense for employers with payroll expense greater than three hundred seventy-five thousand dollars and no greater than four hundred thirty-seven thousand five hundred dollars in any calendar quarter, (iii) sixty hundredths (.60) percent of the payroll expense for employers with payroll expense greater than four hundred thirty-seven thousand five hundred dollars and no greater than two million five hundred thousand dollars in any calendar quarter; and (iv) eight hundred ninety-five thousandths (.895) percent of the payroll expense for employers with payroll expense in excess of two million five hundred thousand dollars in any calendar quarter. Provided, however, that for employers within MCTD zone one who are local government employers as defined in this article with payroll expense in excess of two million five hundred thousand dollars in any calendar quarter, the tax is imposed at a rate of sixty hundredths (.60) percent of the payroll expense. If the employer is a professional employer organization, as defined in section nine hundred sixteen of the

labor law, the employer's tax shall be calculated by determining the payroll expense attributable to each client who has entered into a professional employer agreement with such organization and the payroll expense attributable to such organization itself, multiplying each of those payroll expense amounts by the applicable rate set forth in this paragraph and adding those products together.

(D) For tax quarters beginning on and after July first, two thousand twenty-five, for employers within MCTD zone two that are not local government employers, the tax is imposed at a rate of (i) fifty-five thousandths (.055) percent of the payroll expense for employers with payroll expense greater than three hundred twelve thousand five hundred dollars and no greater than three hundred seventy-five thousand dollars in any calendar quarter, (ii) one hundred fifteen thousandths (.115) percent of the payroll expense for employers with payroll expense greater than three hundred seventy-five thousand dollars and no greater than four hundred thirty-seven thousand five hundred dollars in any calendar quarter, (iii) thirty-four hundredths (.34) percent of the payroll expense for employers with payroll expense greater than four hundred thirty-seven thousand five hundred dollars and no greater than two million five hundred thousand dollars in any calendar quarter; and (iv) six hundred thirty-five thousandths (.635) percent of the payroll expense for employers with payroll expense in excess of two million five hundred thousand dollars in any calendar quarter. If the employer is a professional employer organization, as defined in section nine hundred sixteen of the labor law, the employer's tax shall be calculated by determining the payroll expense attributable to each client who has entered into a professional employer agreement with such organization and the payroll expense attributable to such organization itself, multiplying each of those payroll expense amounts by the applicable rate set forth in this paragraph and adding those products together.

(2) For individuals in calendar years beginning before January first, two thousand twenty-six: (A) the tax is imposed at a rate of thirty-four hundredths (.34) percent of the net earnings from self-employment of individuals that are attributable to the MCTD, in the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester, if such earnings attributable to the MCTD exceed fifty thousand dollars for the tax year.

(B) the tax is imposed at a rate of sixty hundredths (.60) percent of the net earnings from self-employment of individuals that are attributable to the MCTD, in the counties of Bronx, Kings, New York, Queens, and Richmond, if such earnings attributable to the MCTD exceed fifty thousand dollars for the tax year.

(3) For individuals in calendar years beginning on and after January first, two thousand twenty-six: (A) the tax is imposed at a rate of sixty hundredths (.60) percent of the net earnings from self-employment of individuals that are attributable to MCTD zone one, if such earnings attributable to the MCTD exceed one hundred fifty thousand dollars for the tax year.

(B) the tax is imposed at a rate of thirty-four hundredths (.34) percent of the net earnings from self-employment of individuals that are attributable to MCTD zone two, if such earnings attributable to the MCTD exceed one hundred fifty thousand dollars for the tax year.

(b)(1) An individual having net earnings from self-employment from activity both within and without the metropolitan commuter transportation district is required to allocate and apportion such net earnings to the MCTD in the manner required for allocation and apportionment of income under article twenty-two of this chapter.

(2) In the case of individuals with earnings from self-employment, the net earnings from self employment threshold in paragraphs two or three of subsection (a) of this section will be computed on an individual basis regardless of whether that individual filed a joint personal income tax return.

(c) The determination of whether a covered employee is employed within the MCTD will be made by utilizing the rules applicable to the jurisdiction of employment for purposes of the statewide wage reporting system under section one hundred seventy-one-a of this chapter and substituting the MCTD for the state in that application.

§ 802. Pass through of tax prohibited. An employer cannot deduct from the wages or compensation of an employee any amount that represents all or any portion of the tax imposed on the employer under this article.

§ 803. Exemption override. (a) Except as provided in subdivision (b) of this section, any exemption from tax specified in any other New York state law will not apply to the tax imposed by this article.

(b) If a tax-free NY area approved pursuant to the provisions of article twenty-one of the economic development law is located within the MCTD, the payroll expense in such tax-free NY area of any employer that is located in such area and accepted into the START-UP NY program shall be exempt from the tax imposed under this article. In addition, the net earnings from self-employment of an individual from a business in such tax-free NY area that is accepted into the START-UP NY program shall be exempt from the tax imposed under this article.

§ 804. Payment of tax. (a) Employers with payroll expense. The tax imposed on the payroll expense of employers under section eight hundred one of this article for each calendar quarter must be paid quarterly at the same time as the statewide wage reporting system report is required under section one hundred seventy-one-a of this chapter; provided however, that employers subject to section nine of this chapter other than school districts as defined in section thirty-six hundred nine-g of the education law must pay the tax on the payroll expense at the same time as the withholding tax remitted under the electronic payment reporting system and the electronic funds transfer system authorized by section nine of this chapter.

(b) Individuals with net earnings from self-employment. Individuals with earnings from self-employment must make estimated tax payments of the tax imposed by this article for the taxable year on the same dates specified in paragraph one of subsection (c) of section six hundred eighty-five of this chapter. In addition, these self-employed individuals must file a return for the taxable year by the fifteenth day of the fourth month following the close of the taxable year. Paragraph one of subsection (d) of section six hundred eighty-five of this chapter shall not apply to the estimated tax payments required by this subsection.

§ 805. Deposit and disposition of revenue. (a) The taxes, interest,

and penalties imposed by this article and collected or received by the commissioner shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller in trust for the metropolitan transportation authority. An account may be established in one or more of such depositories. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds under this article. The commissioner is authorized and directed to deduct from the amounts it receives under this article, before deposit into the trust accounts designated by the comptroller, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs incurred to administer, collect and distribute the taxes imposed by this article.

(b) On or before the twelfth and twenty-sixth day of each succeeding month, after reserving such amount for such refunds and deducting such amounts for such costs, as provided for in subsection (a) of this section, the commissioner shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed. The amount of revenues so certified shall be paid over by the fifteenth and the final business day of each succeeding month from such account without appropriation into the metropolitan transportation authority finance fund established pursuant to section twelve hundred seventy-h of the public authorities law, provided, however, that the comptroller shall ensure that any payments to the metropolitan transportation authority finance fund which are due to be paid by the final business day in the month of December pursuant to this subsection shall be received by the metropolitan transportation authority finance fund on the same business day in which it is paid.

§ 806. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article

in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due under this article.

(b) Combined Filings. Notwithstanding any other provisions of this article:

(1) The commissioner may require the filing of a combined return which, in addition to the return provided for in subsection (b) of section eight hundred four of this article, may also include any of the returns required to be filed by a taxpayer pursuant to the provisions of section six hundred fifty-one of this chapter and which may be required to be filed by such taxpayer pursuant to any local law enacted pursuant to the authority of article thirty, thirty-A or thirty-B of this chapter.

(2) Where a combined return is required, and with respect to the payment of estimated tax, the commissioner may also require the payment to it of a single amount which shall equal the total of the amounts (total taxes less any credits or refunds) which would have been required to be paid with the returns or in payment of estimated tax pursuant to the provisions of this article, the provisions of article twenty-two of this chapter, and the provisions of local laws enacted under the authority of article thirty, thirty-A or thirty-B of this chapter.

(3) Notwithstanding any other law to the contrary, the commissioner may require that all filings of forms or returns under this article must be filed electronically and all payments of tax must be paid electronically.

§ 807. Enforcement with other taxes. (a) Joint assessment. If there is assessed a tax under this article and there is also assessed a tax against the same taxpayer pursuant to article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, article thirty-A, or article thirty-B of this chapter, and

payment of a single amount is required under the provisions of this article, such payment shall be deemed to have been made with respect to the taxes so assessed in proportion to the amounts of such taxes due, including tax, penalties, interest and additions to tax.

(b) Joint action. If the commissioner takes action under such article twenty-two or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter with respect to the enforcement and collection of the tax or taxes assessed under such articles, the commissioner shall, whenever possible and necessary, accompany such action with a similar action under similar enforcement and collection provisions of the tax imposed by this article.

(c) Apportionment of moneys collected by joint action. Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter and the tax imposed by this article.

(d) Joint deficiency action. Whenever the commissioner takes any action with respect to a deficiency of income tax under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter, other than the action set forth in subsection (a) of this section, the commissioner may in his or her discretion accompany such action with a similar action under this article.

ARTICLE 24

EMPLOYER COMPENSATION EXPENSE PROGRAM

Section 850. Definitions.

851. Employer election.

852. Imposition and rate of tax.

853. Pass through of tax.

854. Payment of tax.

855. Employee credit.

856. Deposit and disposition of revenue.

857. Procedural provisions.

§ 850. Definitions. For purposes of this article:

(a) Employer. Employer means an employer that is required by section six hundred seventy-one of this chapter to deduct and withhold tax from wages.

(b) Electing employer. Electing employer is an employer that has made the election provided for in section eight hundred fifty-one of this article.

(c) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

(d) Covered employee. Covered employee means an employee of an electing employer who is employed in New York, who is required to have amounts withheld under section six hundred seventy-one of this chapter, and who receives annual wages and compensation from his or her employer of more than forty thousand dollars annually. The determination of whether an employee is a covered employee under this article will be made by utilizing the rules applicable to the jurisdiction of employment for purposes of the statewide wage reporting system under section one hundred seventy-one-a of this chapter.

§ 851. Employer election. (a) Any employer who employs covered employees in the state shall be allowed to make an annual election to be taxed under this article.

(b) In order to be effective, the annual election must be made by (1) if the employer is not a corporation, by any member, owner, or other individual with authority to bind the entity or sign returns required pursuant to section six hundred fifty-three of this chapter; or (2) if the employer is a for-profit or not-for-profit corporation, by any officer or manager of the employer who is authorized under the law of the state where the corporation is incorporated or under the employer's organizational documents to make the election and who represents to having such authorization under penalty of perjury; or (3) if the employer is a trust, by the unanimous consent of all trustees; or (4) if

the employer is a governmental entity, by the chief executive officer of such governmental entity.

(c) The annual election must be made by December first of each calendar year and will take effect for the immediately succeeding calendar year. If an election is made after December first of a calendar year, it will first take effect in the second succeeding calendar year.

(d) If an employer determines that the election made pursuant to subsection (b) of this section was in error and such employer does not wish to participate in the program for the calendar year and has taken no action to comply with the requirements of this article, the employer may revoke the election to participate in the program. For the calendar year two thousand twenty, such revocation of the employer election may be made on or before April fifteenth, two thousand twenty. For calendar years beginning two thousand twenty-one and thereafter, such revocation of the employer election must be made no later than January fifteenth of the immediately succeeding calendar year after the employer election was made.

§ 852. Imposition and rate of tax. A tax is hereby imposed on the payroll expense paid by electing employers to covered employees. For two thousand nineteen, the tax shall be equal to one and one-half percent of the payroll expense paid by electing employers to covered employees during the calendar quarter. For two thousand twenty, the tax shall be equal to three percent of the payroll expense paid by electing employers to covered employees during the calendar quarter. For two thousand twenty-one and thereafter, the tax shall be equal to five percent of the payroll expense paid by electing employers to covered employees during the calendar quarter. An electing employer shall only be subject to the tax imposed under this article on the payroll expense paid to any covered employee during the calendar year in excess of forty thousand dollars.

§ 853. Pass through of tax. An employer cannot deduct from the wages or compensation of an employee any amount that represents all or any

portion of the tax imposed on the employer under this article.

§ 854. Payment of tax. Employers with payroll expense. The tax imposed on the payroll expense of electing employers under section eight hundred fifty-two of this article must be paid at the same time the electing employer is required to remit payments under section six hundred seventy-four of this chapter; provided however, that electing employers subject to the provisions in section nine of this chapter must pay the tax on the payroll expense at the same time as the withholding tax remitted under the electronic payment reporting system and the electronic funds transfer system authorized by section nine of this chapter.

§ 855. Employee credit. A covered employee shall be allowed a credit against the tax imposed under article twenty-two of this chapter, computed pursuant to the provisions of subsection (ccc) of section six hundred six of this chapter.

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

§ 857. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due under this article.

(b) Notwithstanding any other law to the contrary, the commissioner may require that all filings of forms or returns under this article must be filed electronically and all payments of tax must be paid electronically. The commissioner may prescribe the methods for quarterly filings by electing employers, including but not limited to, the inclusion of specific employee-level detail.

ARTICLE 24-A

PASS-THROUGH ENTITY TAX

Section 860. Definitions.

861. Pass-through entity tax election.

862. Imposition and rate of tax.

863. Pass-through entity tax credit.

864. Payment of estimated tax.

865. Filing of return and payment of tax.

866. Procedural provisions.

§ 860. Definitions. For purposes of this article:

(a) Eligible partnership. Eligible partnership means any partnership as provided for in section 7701(a)(2) of the Internal Revenue Code that has a filing requirement under paragraph one of subsection (c) of section six hundred fifty-eight of this chapter other than a publicly traded partnership as defined in section 7704 of the Internal Revenue Code. An eligible partnership includes any entity, including a limited liability company, treated as a partnership for federal income tax purposes that otherwise meets the requirements of this subdivision.

(b) Eligible S corporation. Eligible S corporation means any New York S corporation as defined pursuant to subdivision one-A of section two hundred eight of this chapter that is subject to tax under section two hundred nine of this chapter. An eligible S corporation includes any entity, including a limited liability company, treated as an S corporation for federal income tax purposes that otherwise meets the requirements of this subdivision.

(c) Electing partnership. Electing partnership means any eligible partnership that made a valid, timely election pursuant to section eight

hundred sixty-one of this article.

(d) Electing S corporation. Electing S corporation means any eligible S corporation that made a valid, timely election pursuant to section eight hundred sixty-one of this article that is either an electing resident S corporation or electing standard S corporation.

(e) Taxpayer. Taxpayer means any electing partnership or electing S corporation.

(f) Pass-through entity tax. Pass-through entity tax means the total tax imposed by this article on electing partnerships and electing S corporations.

(g) Direct share of pass-through entity tax. Direct share of pass-through entity tax means the portion of pass-through entity tax calculated on pass-through entity taxable income that is also included in the taxable income of a partner or member of the electing partnership or the taxable income of a shareholder of the electing S corporation under article twenty-two of this chapter.

(h) Pass-through entity taxable income. Pass-through entity taxable income means: (1) In the case of an electing partnership, the sum of (i) all items of income, gain, loss, or deduction derived from or connected with New York sources to the extent they are included in the taxable income of a nonresident partner subject to tax under article twenty-two, under paragraph one of subsection (a) of section six hundred thirty-two of this chapter; (ii) all items of income, gain, loss, or deduction to the extent they are included in the taxable income of a resident partner subject to tax under article twenty-two of this chapter; and (iii) all pass-through entity taxes including taxes paid under this article to New York, taxes paid under article twenty-four-B of this chapter to the city of New York, and taxes paid to other jurisdictions that are substantially similar to the taxes paid under this article, to the extent that, for federal income tax purposes, the taxes are paid and deducted in the taxable year, and are included in the taxable income of the partners subject to tax under article twenty-two of this chapter for the taxable year.

(2) In the case of an electing standard S corporation, the sum of (i) all items of income, gain, loss, or deduction derived from or connected with New York sources to the extent they would be included under paragraph two of subsection (a) of section six hundred thirty-two of

this chapter in the taxable income of a shareholder subject to tax under article twenty-two of this chapter; and (ii) all pass-through entity taxes including taxes paid under this article to New York, taxes paid under article twenty-four-B of this chapter to the city of New York, and taxes paid to other jurisdictions that are substantially similar to the taxes paid under this article, to the extent that, for federal income tax purposes, the taxes are paid and deducted in the taxable year, and are included in the taxable income of the shareholders subject to tax under article twenty-two of this chapter for the taxable year.

(3) In the case of an electing resident S corporation, the sum of (i) all items of income, gain, loss, or deduction to the extent they are included in the taxable income of a shareholder subject to tax under article twenty-two of this chapter; and (ii) all pass-through entity taxes including taxes paid under this article to New York, taxes paid under article twenty-four-B of this chapter to the city of New York, and taxes paid to other jurisdictions that are substantially similar to taxes paid under this article, to the extent that, for federal income tax purposes, the taxes are paid and deducted in the taxable year, and are included in the taxable income of the shareholders subject to tax under article twenty-two of this chapter for the taxable year.

(i) Taxable year. An electing partnership's or electing S corporation's taxable year pursuant to this article shall be the same as the electing partnership's or electing S corporation's taxable year for federal income tax purposes.

(j) Electing resident S corporation. An electing resident S corporation is an electing S corporation that certifies at the time of its election that all of its shareholders are residents of New York for purposes of article twenty-two of this chapter.

(k) Electing standard S corporation. An electing standard S corporation is an electing S corporation that is not an electing resident S corporation.

§ 861. Pass-through entity tax election. (a) Any eligible partnership or eligible S corporation shall be allowed to make an annual election to be taxed pursuant to this article.

(b) In order to be effective, the annual election must be made (1) if

the entity is an S corporation, by any officer, manager or shareholder of the S corporation who is authorized under the law of the state where the corporation is incorporated or under the S corporation's organizational documents to make the election and who represents to having such authorization under penalty of perjury; or (2) if the entity is not an S corporation, by any member, partner, owner, or other individual with authority to bind the entity or sign returns pursuant to section six hundred fifty-three of this chapter.

(c) The annual election must be made on or before the due date of the first estimated payment under section eight hundred sixty-four of this article and will take effect for the current taxable year. Only one election may be made during each calendar year. An election made under this section is irrevocable after the due date.

(d) Special rules for electing S corporations. (1) An electing S corporation must certify at the time of its election that all shareholders are residents of New York for purposes of article twenty-two of this chapter to be considered an electing resident S corporation.

(2) If an electing S corporation does not make a certification under paragraph one of this subsection at the time of its election, the electing S corporation is automatically treated as an electing standard S corporation.

(3) If an electing S corporation makes a certification under paragraph one of this subsection to be an electing resident S corporation, this certification is irrevocable as of the due date of the election.

§ 862. Imposition and rate of tax. A tax is hereby imposed for each taxable year on the pass-through entity taxable income of every electing partnership and every electing S corporation. This tax shall be in addition to any other taxes imposed under this chapter and shall be determined in accordance with the following table:

For each taxable year beginning on or after January first, two thousand twenty-one: If pass-through entity taxable income is: Not over \$2,000,000 6.85% of taxable income. Over \$2,000,000 but not over \$5,000,000 \$137,000 plus 9.65% of the excess over \$2,000,000. Over

\$5,000,000 but not over \$25,000,000 \$426,500 plus 10.30% of excess over \$5,000,000. Over \$25,000,000 \$2,486,500 plus 10.90% of the excess over \$25,000,000.

§ 863. Pass-through entity tax credit. (a) Personal income tax credit.

(1) A taxpayer subject to tax under article twenty-two of this chapter that is a direct partner or member in an electing partnership or a direct shareholder of an electing S corporation subject to tax under this article shall be allowed a credit against the tax imposed pursuant to article twenty-two of this chapter, computed pursuant to the provisions of subsection (kkk) of section six hundred six of this chapter. An entity that is disregarded for tax purposes will be disregarded for purposes of determining if a taxpayer is a direct partner or member of an electing partnership or direct shareholder of an electing S corporation.

(2) Limitation on credit. No credit shall be allowed to a taxpayer under paragraph one of this subsection unless the electing partnership or electing S corporation paid the tax imposed under this article and provided sufficient information on the pass-through entity tax return as prescribed by the commissioner to identify that taxpayer. Such information shall include, but not be limited to, the social security number or taxpayer identification number of the article twenty-two taxpayer who will claim the credit (even in the case of a disregarded entity owned by such taxpayer).

(b) Limitation on credit. The aggregate amount of credits claimed by all partners, members or shareholders of an electing partnership or electing S corporation pursuant to subsection (a) of this section shall not exceed the tax due under subsection (a) of section eight hundred sixty-two of this article from such electing partnership or electing S corporation for the taxable year.

§ 864. Payment of estimated tax. (a) Definition of estimated tax.

Estimated tax means the amount that an electing partnership or electing S corporation estimates to be the tax imposed by section eight hundred sixty-two of this article for the current taxable year.

(b) General. The estimated tax shall be paid as follows for an electing partnership and an electing S corporation:

(1) The estimated tax shall be paid in four equal installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth in the calendar year prior to the year in which the due date of the return required by this article falls.

(2) The amount of any required installment shall be twenty-five percent of the required annual payment.

(3) Notwithstanding paragraph four of subsection (c) of section six hundred eighty-five of this chapter, the required annual payment is the lesser of: (A) ninety percent of the tax shown on the return for the taxable year; or (B) one hundred percent of the tax shown on the return of the electing partnership or electing S corporation for the preceding taxable year.

(c) Application to short taxable year. This section shall apply to a taxable year of less than twelve months in accordance with procedures established by the commissioner.

(d) Installments paid in advance. An electing partnership or electing S corporation may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

§ 865. Filing of return and payment of tax. (a) General. On or before March fifteenth following the close of the taxable year, each electing partnership and each electing S corporation must file a return for the taxable year reporting the information required pursuant to this article. For each electing partnership and each electing S corporation that has a fiscal taxable year, the return is due on or before March fifteenth following the close of the calendar year that contains the final day of the entity's taxable year.

(b) Certification of eligibility. Every return filed pursuant to subsection (a) of this section shall include, in a format as prescribed by the commissioner, a certification by an individual authorized to act on behalf of the electing partnership or electing S corporation that the taxpayer:

(1) made a timely, valid election to be subject to tax pursuant to this article; and

(2) that all statements contained therein are true.

(c) Information on the electing partnership return. Each electing partnership shall report on such return:

(1) Any tax due pursuant to this article. The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;

(2) Identifying information of all partners and/or members eligible to receive a credit pursuant to section eight hundred sixty-three of this article;

(3) Each partner's and/or member's share of the pass-through entity tax imposed on the electing partnership;

(4) Each partner's and/or member's distributive share of the pass-through entity taxable income calculated pursuant to paragraph one of subsection (h) of section eight hundred sixty of this article;

(5) The classification of each partner and/or member as a resident or nonresident for purposes of calculating the electing partnership's pass-through entity taxable income under paragraph one of subsection (h) of section eight hundred sixty of this article; and

(6) Any other information as required by the commissioner.

(d) Information on electing S corporation return. Each electing S corporation shall report on such return:

(1) Any tax due pursuant to this article. The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;

(2) Identifying information of all shareholders eligible to receive a credit pursuant to section eight hundred sixty-three of this article;

(3) Each shareholder's direct share of the pass-through entity tax imposed on the electing S corporation; and

(4) Any other information as required by the commissioner.

(e) Special rules for partners, members and shareholders that are disregarded entities. To meet the requirements of paragraph two of subsection (c) of this section for an electing partnership or paragraph two of subsection (d) of this section for an electing S corporation, the electing partnership or electing S corporation must provide information sufficient to identify both the disregarded entity that is a partner, member and/or shareholder and the taxpayer subject to tax under article twenty-two of this chapter eligible for a credit under subsection (a) of

section eight hundred sixty-three of this article.

(f) Extensions and amendments. (1) The commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, statement, or other document required pursuant to this article, on such terms and conditions as it may require. No such extension for filing any return, statement or other document, shall exceed six months.

(2) No amended returns. Once a return has been filed by an electing partnership or electing S corporation, it may not be amended without the consent of or otherwise authorized by the commissioner.

(g) Information provided to partners. Each electing partnership subject to tax under this article shall report to each partner or member its:

(1) classification as a resident or nonresident for purposes of calculating the electing partnership's or electing S corporation's pass-through entity taxable income under subsection (g) of section eight hundred sixty of this article;

(2) direct share of the pass-through entity tax imposed on the electing partnership; and

(3) any other information as required by the commissioner.

(h) Information provided to shareholders. Each electing S corporation subject to tax under this article shall report to each shareholder its:

(1) direct share of the pass-through entity tax imposed on the electing S corporation;

(2) the electing S corporation's status as an electing resident S corporation or electing standard S corporation; and

(3) any other information as required by the commissioner.

§ 866. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence,

no credit against tax in article twenty-two of this chapter can be used to offset the tax due pursuant to this article.

(b) Notwithstanding any other law to the contrary, the commissioner may require that all forms or returns pursuant to this article must be filed electronically and all payments of tax must be paid electronically.

(c) Liability for tax. (1) An electing partnership or electing S corporation shall be liable for the tax due pursuant to this article.

(2) Except as provided in paragraph three of this subsection, any article twenty-two taxpayer eligible to claim a credit pursuant to subsection (kkk) of section six hundred six of this chapter because he or she is a partner or member in an electing partnership or a shareholder in an electing S corporation, either directly or through a disregarded entity, shall be severally liable to the extent not paid by the electing partnership or electing S corporation for his or her direct share of pass-through entity tax.

(3) Any article twenty-two taxpayer eligible to claim a credit pursuant to subsection (kkk) of section six hundred six of this chapter because he or she is a partner or member in an electing partnership or a shareholder in an electing S corporation, either directly or through a disregarded entity, that is a general, managing or controlling partner of the electing partnership or managing or controlling shareholder of the electing S corporation, or owns greater than fifty percent of the interests or profits of the electing partnership or electing S corporation, or is under a duty to act for the electing partnership or S corporation in complying with the provisions of this article, or was the individual that made the election on behalf of the electing partnership or electing S corporation under subsection (b) of section eight hundred sixty-one of this article shall be jointly and severally liable for the tax imposed pursuant to this article on such electing partnership or electing S corporation.

(d) Deposit and disposition of revenue. All taxes, interest, penalties, and fees collected or received by the commissioner pursuant to this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

(e) Secrecy provision. All the provisions of paragraphs one and two of subsection (e) of section six hundred ninety-seven of this chapter will

apply to the provisions of this article. Notwithstanding any provisions of this chapter to the contrary, the commissioner may disclose information and returns regarding the calculation and payment of the tax imposed by this article and any credit calculated on taxes paid pursuant to this article by an electing partnership or electing S corporation to a partner, member or shareholder of such entity that is eligible for or claims to be eligible for a credit under subsection (a) of section eight hundred sixty-three of this article.

ARTICLE 24-B

CITY PASS-THROUGH ENTITY TAX

Section 867. Definitions.

868. City pass-through entity tax election.

869. Imposition and rate of tax.

870. City pass-through entity tax credit.

871. Payment of estimated tax.

872. Filing of return and payment of tax.

873. Procedural and administrative provisions.

§ 867. Definitions. For purposes of this article:

(a) City pass-through entity tax. City pass-through entity tax means the total tax imposed by this article on an electing city partnership or an electing city resident S corporation.

(b) City pass-through entity taxable income. City pass-through entity taxable income means:

(1) In the case of an electing city partnership, the sum of (i) all items of income, gain, loss, or deduction to the extent they are included in the city taxable income of a partner or member of the electing city partnership who is a city taxpayer; and (ii) all pass-through entity taxes including taxes paid under article twenty-four-A of this chapter to New York, taxes paid under this article to the city of New York, and taxes paid to other jurisdictions that are substantially similar to taxes paid under article twenty-four-A of this chapter, to the extent that, for federal income tax purposes, the taxes were paid and deducted in the taxable year, and they are included in the

taxable income of the partners subject to tax under article twenty-two of this chapter for the taxable year.

(2) In the case of an electing city resident S corporation, the sum of (i) all items of income, gain, loss, or deduction to the extent they would be included in the city taxable income of a shareholder of the electing city resident S corporation who is a city taxpayer; and (ii) all pass-through entity taxes including taxes paid under article twenty-four-A of this chapter to New York, taxes paid under this article to the city of New York, and taxes paid to other jurisdictions that are substantially similar to taxes paid under article twenty-four-A of this chapter, to the extent that, for federal income tax purposes, the taxes were paid and deducted in the taxable year, and they are included in the taxable income of the shareholders subject to tax under article twenty-two of this chapter for the taxable year.

(c) City resident individual. City resident individual has the same meaning as that term is defined in subsection (a) of section thirteen hundred five of this chapter.

(d) City taxable income. City taxable income has the same meaning as that term is defined in section thirteen hundred three of this chapter.

(e) City taxpayer. A city taxpayer means:

(1) a city resident individual, as defined in subsection (a) of section thirteen hundred five of this chapter; and

(2) a city resident trust or estate, as defined in subsection (c) of section thirteen hundred five of this chapter.

(f) Direct share of city pass-through entity tax. Direct share of city pass-through entity tax means the portion of city pass-through entity tax calculated on city pass-through entity taxable income of a city taxpayer who is a partner or member of the electing city partnership or a city taxpayer who is a shareholder of the electing city resident S corporation.

(g) Electing city partnership. Electing city partnership means any eligible partnership that made a valid, timely election pursuant to section eight hundred sixty-eight of this article.

(h) Electing city resident S corporation. Electing city resident S corporation means any eligible resident S corporation that made a valid, timely election pursuant to section eight hundred sixty-eight of this article.

(i) Eligible city partnership. Eligible city partnership means any partnership as provided for in section 7701(a)(2) of the Internal Revenue Code that has a filing requirement under paragraph one of subsection (c) of section six hundred fifty-eight of this chapter other than a publicly traded partnership as defined in section 7704 of the Internal Revenue Code, where at least one partner or member is a city taxpayer. An eligible city partnership includes any entity, including a limited liability company, treated as a partnership for federal income tax purposes that otherwise meets the requirements of this subsection.

(j) Eligible city resident S corporation. Eligible city resident S corporation means any New York S corporation as defined pursuant to subdivision one-A of section two hundred eight of this chapter that is subject to tax under section two hundred nine of this chapter that has only city taxpayer shareholders. An eligible city resident S corporation includes any entity, including a limited liability company, treated as an S corporation for federal income tax purposes that otherwise meets the requirements of this subsection.

(k) Taxable year. An electing city partnership's or electing city resident S corporation's taxable year pursuant to this article shall be the same as the electing city partnership's or electing city resident S corporation's taxable year for federal income tax purposes.

§ 868. City pass-through entity tax election. (a) Any eligible city partnership that makes the annual election to be taxed pursuant to article twenty-four-A of this chapter in accordance with section eight hundred sixty-one of this chapter or any eligible city resident S corporation that makes the annual election to be taxed pursuant to article twenty-four-A of this chapter as an electing resident S corporation in accordance with section eight hundred sixty-one of this chapter may make an annual election to be taxed pursuant to this article for the same taxable year for which such eligible city partnership or eligible city resident S corporation has made an election to be taxed pursuant to article twenty-four-A of this chapter. The election to be taxed pursuant to this article must be made by the due date as specified in subsection (c) of section eight hundred sixty-one of this chapter and in the same manner as the election to be taxed pursuant to article

twenty-four-A of this chapter.

(b) In order to be effective, the annual election to be taxed pursuant to this article must be made by an individual as described in subsection (b) of section eight hundred sixty-one of this chapter who made the annual election to be taxed pursuant to article twenty-four-A of this chapter for the taxable year.

(c) The annual election to be taxed pursuant to this article must be made on or before the due date of the first estimated payment under section eight hundred sixty-four of this chapter and will take effect for the current taxable year. Only one election to be taxed pursuant to this article may be made during each calendar year. An election made under this section is irrevocable after such due date. To the extent an election made under section eight hundred sixty-one of this chapter is revoked or otherwise invalidated an election made under this section is automatically invalidated.

§ 869. Imposition and rate of tax. A tax is hereby imposed for each taxable year on the city pass-through entity taxable income of every electing city partnership and every electing city resident S corporation. This tax shall be in addition to any other taxes imposed on such partnership or such S corporation. For each taxable year beginning on or after January first, two thousand twenty-two, the rate of tax shall be 3.876 percent of city pass-through entity taxable income.

§ 870. City pass-through entity tax credit. (a) Personal income tax credit. (1) A city taxpayer who is a direct partner or member in an electing city partnership or a direct shareholder of an electing city resident S corporation subject to tax under this article shall be allowed a credit against the tax imposed pursuant to the authority of article thirty of this chapter, computed pursuant to the provisions of subsection (g) of section thirteen hundred ten of this chapter. An entity that is disregarded for tax purposes will be disregarded for purposes of determining if a city taxpayer is a direct partner or member of an electing city partnership or a direct shareholder of an electing city resident S corporation.

(2) Limitation on credit. No credit shall be allowed to a city taxpayer under paragraph one of this subsection unless the electing city partnership or electing city resident S corporation paid the tax imposed under this article and provided sufficient information on the city pass-through entity tax return as prescribed by the commissioner to identify such city taxpayer. Such information shall include, but not be limited to, the social security number or taxpayer identification number of the city taxpayer who will claim the credit (even in the case of a disregarded entity owned by such city taxpayer).

(b) Limitation on credit. The aggregate amount of credits claimed by all partners, members or shareholders of an electing city partnership or an electing city resident S corporation pursuant to subsection (a) of this section shall not exceed the tax due under section eight hundred sixty-nine of this article from such electing city partnership or electing city resident S corporation for the taxable year.

§ 871. Payment of estimated tax. (a) Definition of estimated tax. Estimated tax means the amount that an electing city partnership or electing city resident S corporation estimates to be the tax imposed by section eight hundred sixty-nine of this article for the current taxable year.

(b) General. Except as provided in subsection (c) of this section, the estimated tax shall be paid as follows for an electing city partnership and an electing city resident S corporation:

(1) The estimated tax shall be paid in four equal installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth in the calendar year prior to the year in which the due date of the return required by this article falls.

(2) The amount of any required installment shall be twenty-five percent of the required annual payment.

(3) Without regard to paragraph four of subsection (c) of section six hundred eighty-five of this chapter, the required annual payment is the lesser of: (A) ninety percent of the tax shown on the return for the taxable year; or (B) one hundred percent of the tax shown on the return of the electing city partnership or electing city resident S corporation for the preceding taxable year.

(c) Application to short taxable year. This section shall apply to a taxable year of less than twelve months in accordance with procedures established by the commissioner.

(d) Installments paid in advance. An electing city partnership or electing city resident S corporation may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

§ 872. Filing of return and payment of tax. (a) General. On or before March fifteenth following the close of the taxable year, each electing city partnership and each electing city resident S corporation must file a return for the taxable year reporting the information required pursuant to this article. For each electing city partnership and each electing city resident S corporation that has a fiscal taxable year, the return is due on or before March fifteenth following the close of the calendar year that contains the final day of the electing city partnership's or electing city resident S corporation's taxable year.

(b) Certification of eligibility. Every return filed pursuant to subsection (a) of this section shall include, in a format as prescribed by the commissioner, a certification by an individual authorized to act on behalf of the electing city partnership or electing city resident S corporation that such electing city partnership or electing city resident S corporation:

(1) Made a timely, valid election to be subject to tax pursuant to this article; and

(2) That all statements contained therein are true.

(c) Information on the electing city partnership return. Each electing city partnership shall report on such return:

(1) Any tax due pursuant to this article. The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;

(2) Identifying information of all partners and/or members who are city taxpayers and eligible to receive a credit pursuant to section eight hundred seventy of this article;

(3) Each partner's and/or member's direct share of the city pass-through entity tax imposed on the electing city partnership;

(4) Each partner's and/or member's distributive share of the city

pass-through entity taxable income calculated pursuant to paragraph one of subsection (b) of section eight hundred sixty-seven of this article;

(5) The classification, as applicable, of each partner and/or member as a city resident individual for purposes of calculating the electing city partnership's city pass-through entity taxable income; and

(6) Any other information as required by the commissioner.

(d) Information on electing city resident S corporation return. Each electing city resident S corporation shall report on such return:

(1) Any tax due pursuant to this article. The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;

(2) Identifying information of all shareholders who are city taxpayers and eligible to receive a credit pursuant to section eight hundred seventy of this article;

(3) Each shareholder's direct share of the pass-through entity tax imposed on the electing city resident S corporation;

(4) Each shareholder's distributive share of the city pass-through entity taxable income calculated pursuant to paragraph two of subsection (b) of section eight hundred sixty-seven of this article; and

(5) Any other information as required by the commissioner.

(e) Special rules for partners, members and shareholders that are disregarded entities. To meet the requirements of paragraph two of subsection (c) of this section for an electing city partnership or paragraph two of subsection (d) of this section for an electing city resident S corporation, the electing city partnership or electing city resident S corporation must provide information sufficient to identify both the disregarded entity that is a partner, member and/or shareholder and the city taxpayer eligible for a credit under subsection (a) of section eight hundred seventy of this article.

(f) Extensions and amendments. (1) The commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, statement, or other document required pursuant to this article, on such terms and conditions as it may require. No such extension for filing any return, statement or other document, shall exceed six months.

(2) No amended returns. Once a return has been filed by an electing city partnership or electing city resident S corporation, it may not be

amended without the consent of or otherwise authorized by the commissioner.

(g) Information provided to partners. Each electing city partnership subject to tax under this article shall report to each partner or member the following:

(1) Classification, as applicable, as a city resident individual for purposes of calculating the electing city partnership's city pass-through entity taxable income;

(2) Direct share of the city pass-through entity tax imposed on the electing city partnership; and

(3) Any other information as required by the commissioner.

(h) Information provided to shareholders. Each electing city resident S corporation subject to tax under this article shall report to each shareholder the following:

(1) The shareholder's direct share of the pass-through entity tax imposed on the electing city resident S corporation; and

(2) Any other information as required by the commissioner.

§ 873. Procedural and administrative provisions. (a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit authorized to offset the tax imposed pursuant to article twenty-two of this chapter or authorized pursuant to section thirteen hundred ten of this chapter can be used to offset the tax due pursuant to this article.

(b) Notwithstanding any other law to the contrary, the commissioner may require that any form or return required pursuant to this article must be filed electronically and any payment of tax must be paid electronically.

(c) Liability for tax. (1) An electing city partnership or electing city resident S corporation shall be liable for the tax due pursuant to

this article.

(2) Except as provided in paragraph three of this subsection, any city taxpayer eligible to claim a credit authorized pursuant to subsection (g) of section thirteen hundred ten of this chapter because such taxpayer is a partner or member in an electing city partnership or a shareholder in an electing city resident S corporation, either directly or through a disregarded entity, shall be severally liable for such taxpayer's direct share of city pass-through entity tax to the extent the tax due pursuant to this article is not paid by the electing city partnership or electing city resident S corporation.

(3) Any taxpayer eligible to claim a credit authorized pursuant to subsection (g) of section thirteen hundred ten of this chapter or a credit authorized pursuant to subsection (kkk) of section six hundred six of this chapter because such taxpayer is a partner or member in an electing city partnership or a shareholder in an electing city resident S corporation, either directly or through a disregarded entity, that is a general, managing or controlling partner of the electing city partnership or managing or controlling shareholder of the electing city resident S corporation, or owns greater than fifty percent of the interests or profits of the electing city partnership or electing city resident S corporation, or is under a duty to act for the electing city partnership or electing city resident S corporation in complying with the provisions of this article, or was the individual that made the election on behalf of the electing city partnership or electing city resident S corporation authorized by section eight hundred sixty-eight of this article, shall be jointly and severally liable for the tax imposed pursuant to this article on such electing city partnership or electing city resident S corporation.

(d) Deposit and disposition of revenue. All taxes, interest, penalties, and fees collected or received by the commissioner pursuant to this article shall be deposited and disposed of in the manner set forth by article thirty of this chapter for taxes imposed pursuant to such article, including but not limited to provisions of such article relating to payments to the New York city transitional finance authority.

(e) Secrecy provision. All the provisions of paragraphs one and two of subsection (e) of section six hundred ninety-seven of this chapter will

apply to the provisions of this article. Notwithstanding any provisions of this chapter to the contrary, the commissioner may disclose information and returns regarding the calculation and payment of the tax imposed by this article and any credit calculated on taxes paid pursuant to this article by an electing city partnership or an electing city resident S corporation to a partner, member or shareholder of such entity that is eligible for or claims to be eligible for a credit under subsection (a) of section eight hundred seventy of this article.

(f) The comptroller shall retain in the comptroller's hands such amount as the commissioner may determine necessary for refunds in respect to the taxes imposed pursuant to the authority of this article, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under any law enacted pursuant to the authority of this article.

ARTICLE 25

RECIPROCAL ENFORCEMENT OF TAX LIABILITIES

Section 901. Collection of taxes by suits in other states.

902. Enforcement of taxes imposed by other states.

903. Interest and penalties.

§ 901. Collection of taxes by suits in other states. At the request of the tax commission the attorney-general may bring suit, in the name of this state, in the appropriate court of any other state to collect any tax legally due this state, and any political subdivision of this state or the appropriate officer thereof, acting in its behalf, may bring suit in the appropriate court of any other state to collect any tax legally due to such political subdivision.

§ 902. Enforcement of taxes imposed by other states. The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or any political subdivision thereof, which extends a like comity to this state, and the duly authorized officer of any such state or a political subdivision thereof may sue for the

collection of such a tax in the courts of this state. A certificate by the secretary of state of such other state that an officer suing for the collection of such a tax is duly authorized to collect the same shall be conclusive proof of such authority.

§ 903. Interest and penalties. For the purposes of this article, the words "tax" and "taxes" shall include interest and penalties due under any taxing statute, and liability for such interest or penalties or both, due under a taxing statute of another state or a political subdivision thereof, shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such interest or penalties or both, due under a taxing statute of this state or a political subdivision thereof.

ARTICLE 26

ESTATE TAX

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Part I

COMPUTATION OF TAX

§ 951. Applicable internal revenue code provisions.-- (a) General. For purposes of this article, any reference to the internal revenue code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before January first, two thousand fourteen and, unless specifically provided otherwise in this article, any reference to December thirty-first, nineteen hundred seventy-six or January first, nineteen hundred seventy-seven contained in the provisions of such code which are applicable to the determination of the tax imposed by this article shall be read as a reference to June thirtieth, nineteen hundred seventy-eight or July first, nineteen hundred seventy-eight, respectively.

§ 951-a. General provisions and definitions. When used in this article:

(a) The term "executor" means the executor or administrator of the estate of the decedent, or, if there is no executor or administrator appointed, qualified and acting, then any person or entity in actual or constructive possession of any property of the decedent.

(b) The term "person" includes an individual, a trustee, a corporation, an association, a joint-stock company, a partnership, a limited liability company and a bank.

(c) The term "tangible personal property" means corporeal personal property, including money held for numismatic purposes, and does not include deposits in banks, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt, or choses in action generally.

(d) The term "persons interested in the estate" shall include all persons who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of a decedent, or any benefit whatsoever with respect to any such property or interest, whether under a will, or intestacy, or by reason of any of the transfers, trusts, estates, interests, rights, powers and relinquishments of powers which are required to be included in the gross estate.

(e) The term "taxpayer" means the estate of the decedent and any other

person subject to or liable for any tax imposed by this article.

(f) Tax treatment of charitable contributions for determining domicile. Notwithstanding any other provision of any other law to the contrary, the making of a financial contribution, gift, bequest, donation or any other financial instrument or pledge in any amount or the donation or loan of any object of any value, or the volunteering, giving or donation of uncompensated time, or any combination of the foregoing, considered a charitable contribution under subsection (c) of section one hundred seventy of the internal revenue code, or to a not-for-profit organization, as defined in subdivision seven of section one hundred seventy-nine-q of the state finance law, shall not be used in any manner to determine where an individual is domiciled at the time of his or her death.

§ 952. Tax imposed. (a) A tax is hereby imposed on the transfer of the New York estate by every deceased individual who at his or her death was a resident of New York state.

(b) Computation of tax. The tax imposed by this section shall be computed on the deceased resident's New York taxable estate as follows:

If the New York taxable estate is:	The tax is:
Not over \$500,000	3.06% of taxable estate
Over \$500,000 but not over \$1,000,000	\$15,300 plus 5.0% of excess over \$500,000
Over \$1,000,000 but not over \$1,500,000	\$40,300 plus 5.5% of excess over \$1,000,000
Over \$1,500,000 but not over \$2,100,000	\$67,800 plus 6.5% of excess over \$1,500,000
Over \$2,100,000 but not over \$2,600,000	\$106,800 plus 8.0% of excess over \$2,100,000
Over \$2,600,000 but not over \$3,100,000	\$146,800 plus 8.8% of excess over \$2,600,000
Over \$3,100,000 but not over \$3,600,000	\$190,800 plus 9.6% of excess over \$3,100,000
Over \$3,600,000 but not over \$4,100,000	\$238,800 plus 10.4% of excess over \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$290,800 plus 11.2% of excess

	over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$402,800 plus 12.0% of excess over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$522,800 plus 12.8% of excess over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$650,800 plus 13.6% of excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$786,800 plus 14.4% of excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$930,800 plus 15.2% of excess over \$9,100,000
Over \$10,100,000	\$1,082,800 plus 16.0% of excess over \$10,100,000

(c) Applicable credit amount. (1) A credit of the applicable credit amount shall be allowed against the tax imposed by this section as provided in this subsection. In the case of a decedent whose New York taxable estate is less than or equal to the basic exclusion amount, the applicable credit amount shall be the amount of tax that would be due under subsection (b) of this section on such decedent's New York taxable estate. In the case of a decedent whose New York taxable estate exceeds the basic exclusion amount by an amount that is less than or equal to five percent of such amount, the applicable credit amount shall be the amount of tax that would be due under subsection (b) of this section if the amount on which the tax is to be computed were equal to the basic exclusion amount multiplied by one minus a fraction, the numerator of which is the decedent's New York taxable estate minus the basic exclusion amount, and the denominator of which is five percent of the basic exclusion amount. Provided, however, that the credit allowed by this subsection shall not exceed the tax imposed by this section, and no credit shall be allowed to the estate of any decedent whose New York taxable estate exceeds one hundred five percent of the basic exclusion amount.

(2) (A) For purposes of this section, the basic exclusion amount shall be as follows:

In the case of decedents dying on or after: The basic exclusion amount is:

April 1, 2014 and before April 1, 2015	\$ 2,062,500
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April 1, 2015 and before April 1, 2016	3,125,000
April 1, 2016 and before April 1, 2017	4,187,500
April 1, 2017 and before January 1, 2019	5,250,000

(B) In the case of any decedent dying in a calendar year beginning on or after January first, two thousand nineteen, the basic exclusion amount shall be equal to:

(i) five million dollars, multiplied by

(ii) one plus the cost-of-living adjustment, which shall be the percentage by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year two thousand ten.

(C) (i) For purposes of this paragraph, "consumer price index" means the most recent consumer price index for all-urban consumers published by the United States department of labor.

(ii) For purposes of clause (ii) of subparagraph (B) of this paragraph, the consumer price index for any calendar year shall be the average of the consumer price index as of the close of the twelve-month period ending on August thirty-first of such calendar year.

(iii) If any amount adjusted under this paragraph is not a multiple of ten thousand dollars, such amount shall be rounded to the nearest multiple of ten thousand dollars.

§ 954. Resident's New York gross estate. (a) General.-- The New York gross estate of a deceased resident means his or her federal gross estate as defined in the internal revenue code (whether or not a federal estate tax return is required to be filed) modified as follows:

(1) Reduced by the value of real or tangible personal property having an actual situs outside New York state.

(2) Increased by the amount determined under section nine hundred fifty-seven of this part (relating to limited powers of appointment created prior to September first, nineteen hundred thirty).

(3) Increased by the amount of any taxable gift under section 2503 of the internal revenue code not otherwise included in the decedent's federal gross estate, made during the three year period ending on the decedent's date of death, but not including any gift made: (A) when the decedent was not a resident of New York state; or (B) before April

first, two thousand fourteen; or (C) between January first, two thousand nineteen and January fifteenth, two thousand nineteen; or (D) that is real or tangible personal property having an actual situs outside New York state at the time the gift was made. Provided, however that this paragraph shall not apply to the estate of a decedent dying on or after January first, two thousand thirty-two. The amount by which the total tax imposed under this article exceeds the total tax that would have been imposed under this article if this paragraph did not apply shall be treated as an obligation of the decedent as of the decedent's death that is subject to the provisions of this article (but which shall not be deductible for purposes of this article).

(4) Increased by the value of any property not otherwise already included in the decedent's federal gross estate in which the decedent had a qualifying income interest for life if a deduction was allowed on the return of the tax imposed by this article with respect to the transfer of such property to the decedent by reason of the application of paragraph (7) of subsection (b) of section 2056 of the internal revenue code, as made applicable to the tax imposed by this article by section nine hundred ninety-nine-a of this article, whether or not a federal estate tax return was required to be filed by the estate of the transferring spouse.

(b) Valuation. -- (1) The New York gross estate shall be valued as of the time of the decedent's death, except that if a federal estate tax return is filed and the alternate valuation under section 2032 of the internal revenue code is elected for federal estate tax purposes, the New York gross estate shall be valued as of the applicable federal valuation date or dates. Any real property qualified under section two thousand thirty-two-A of the internal revenue code shall have the same value for purposes of the New York gross estate as it has for federal estate tax purposes.

(2) If such alternate valuation could have been elected pursuant to paragraph one of this subsection, but for the absence of an estate sufficient to require the filing of a federal return, the New York gross estate may, upon the election of the executor, be valued as of the federal valuation date or dates which would have applied if a federal return had been filed. However, no election may be made under this paragraph unless such election will decrease the value of the New York

gross estate and the amount of tax imposed by this article (reduced by credits allowable against such tax). Any election made under this paragraph shall be irrevocable. The election allowed by this paragraph shall be made no later than the date prescribed for the filing of the return under this article (including extensions) or any time thereafter as the commissioner may prescribe.

(c) Cross references.-- (1) For provisions of the internal revenue code defining the federal gross estate, see:

Sec. 2031. Definition of gross estate.

Sec. 2032. Alternate valuation.

Sec. 2032A. Valuation of certain farm, etc., real property.

Sec. 2033. Property in which the decedent had an interest.

Sec. 2034. Dower or curtesy interest.

Sec. 2035. Adjustments for gifts made within three years of decedent's death.

Sec. 2036. Transfers with retained life estate.

Sec. 2037. Transfers taking effect at death.

Sec. 2038. Revocable transfers.

Sec. 2039. Annuities.

Sec. 2040. Joint interests.

Sec. 2041. Powers of appointment.

Sec. 2042. Proceeds of life insurance.

Sec. 2043. Transfers for insufficient consideration.

Sec. 2044. Certain property for which marital deduction was previously allowed.

Sec. 2045. Prior interests.

Sec. 2046. Disclaimers.

(2) For provisions of the internal revenue code which, except to the extent they are inconsistent with the provisions of this article, are pertinent to the computation of taxable gifts and the tax under this article, see:

Sec. 2503. Taxable gifts.

Sec. 2511. Transfers in general.

Sec. 2512. Valuation of gifts.

Sec. 2513. Gift by husband or wife to third party.

Sec. 2514. Powers of appointment.

Sec. 2516. Certain property settlements.

Sec. 2518. Disclaimers.

Sec. 2519. Dispositions of certain life estates.

Sec. 2522. Charitable and similar gifts.

Sec. 2523. Gift to spouse.

Sec. 2524. Extent of deductions.

Sec. 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships.

Sec. 2702. Special valuation rules in case of transfers of interests in trusts.

Sec. 2703. Certain rights and restrictions disregarded.

Sec. 2704. Treatment of certain lapsing rights and restrictions.

Sec. 7872. Treatment of loans with below-market interest rates.

(3) For effect of federal estate tax determinations, see section nine hundred sixty-one of this article.

§ 955. Resident's New York taxable estate. (a) General.--The taxable estate of a New York resident shall be his or her New York gross estate, minus the deductions allowable for determining his or her federal taxable estate under the internal revenue code (whether or not a federal estate tax return is required to be filed), except to the extent that such deductions relate to real or tangible personal property situated outside New York state.

(b) Waiver of deductions.-- If the right to any deduction otherwise allowable is waived for federal estate tax purposes, it shall be considered waived for New York estate tax purposes.

(c) Qualified terminable interest property election.-- Except as otherwise provided in this subsection, the election referred to in paragraph (7) of subsection (b) of section 2056 of the internal revenue code shall not be allowed under this article unless such election was made with respect to the federal estate tax return required to be filed under the provisions of the internal revenue code. If such election was made for the purposes of the federal estate tax, then such election must also be made by the executor on the return of the tax imposed by this article. Where no federal estate tax return is required to be filed, the executor must make the election referred to in such paragraph (7) with respect to the tax imposed by this article on the return of the tax imposed by this article. Any election made under this subsection shall be irrevocable.

(d) Cross references.-- For provisions of the internal revenue code specifying the deductions allowable for federal estate tax purposes,

see:

Sec.2032(b). Alternate valuation--special rule for deductions.

Sec.2046. Disclaimers.

Sec.2053. Expenses, indebtedness, and taxes.

Sec.2054. Losses.

Sec.2055. Transfers for public, charitable, and religious uses.

Sec.2056. Bequests, etc., to surviving spouse.

§ 957. Modification for limited powers of appointment created prior to September first, nineteen hundred thirty. (a) General.--In determining the New York gross estate, there shall be added to the federal gross estate of a deceased resident the value of all property (other than real and tangible personal property situated outside New York state) passing under a limited power of appointment exercised by the decedent (A) by will or (B) by a disposition which is of such nature that if it were a transfer of property owned by him, such property would be includible in his federal gross estate under section two thousand thirty-five, two thousand thirty-six, two thousand thirty-seven or two thousand thirty-eight of the internal revenue code.

(b) Definition.-- For purposes of this section, a limited power of appointment means a power--

(1) with respect to property which is not or was not subject to New York death tax in the estate of the grantor of such power, but would have been so taxable except for a statute providing that the tax on the transfer of such property should be imposed in the estate of the grantee of such power in the event of its exercise; and

(2) the exercise of which has not required the inclusion of the property in the decedent's federal gross estate under section two thousand forty-one of the internal revenue code (relating to general powers of appointment).

§ 958. Exemptions in other laws not applicable. No exemption provided for in any other article of this chapter or any other law of this state shall be construed as being applicable in any manner under this article.

§ 960. Nonresident's estate tax. (a) General.--A tax is hereby imposed on the transfer, from any deceased individual who at his death was not a resident of New York state, of real and tangible personal property having an actual situs in New York state and either (i) includible in his federal gross estate or (ii) which would be includible in his New York gross estate pursuant to section nine hundred fifty-seven (relating to certain limited powers of appointment) if he were a resident of New York state.

(b) Computation of tax.--The tax imposed under subsection (a) shall be the same as the tax that would be due, if the decedent had died a resident, under subsection (a) of section nine hundred fifty-two, except that for purposes of computing the tax under subsection (b) of section nine hundred fifty-two, "New York taxable estate" shall not include the value of, or any deduction allowable under the Internal Revenue Code related to, any intangible personal property otherwise includible in the deceased individual's New York gross estate, and shall not include the amount of any gift unless such gift consists of real or tangible personal property having an actual situs in New York state or intangible personal property employed in a business, trade or profession carried on in this state.

(c) Cross references.--(1) For valuation of property includible in the New York gross estate if the decedent had been a resident, see section nine hundred fifty-four.

(2) For provisions of the internal revenue code applicable to the federal gross estate of a decedent who was neither a resident nor a citizen of the United States, see:

Sec. 2103. Definition of gross estate.

Sec. 2104. Property within the United States.

Sec. 2105. Property without the United States.

(d) Works of art on loan for exhibition. Notwithstanding the foregoing, the tax imposed under subsection (a) of this section on the transfer, from any deceased individual who at his or her death was not a resident of the state of New York, of works of art having an actual situs in the state of New York and either (i) includible in his or her federal gross estate or (ii) which would be includible in his or her New York gross estate pursuant to section nine hundred fifty-seven (relating to certain limited powers of appointment) if he or she were a resident of the state of New York, shall not be subject to the tax imposed by this section if such works of art are loaned to a public gallery located within the state of New York solely for exhibition purposes but only if no part of the net earnings of such public gallery or museum inure to the benefit of any private stockholder or individual, and, at the time of the death of such individual such works of art are on exhibition or en route to or from exhibition in such a public gallery or museum.

§ 960-a. Reciprocity. The tax imposed by this article in respect of personal property (except tangible personal property having an actual situs in this state) shall not be payable if the transferor is a resident of a state or territory of the United States the laws of which, at the time of the transfer, contained a reciprocal provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein) provided the state or territory of residence of such nonresident allowed a similar exemption to residents of the state or territory of residence of such transferor. For the purposes of this section, the District of Columbia and the Commonwealth of Puerto Rico shall be considered territories of the United States.

§ 961. Effect of federal determination. (a) General.-- A final federal determination as to

(1) the inclusion in the federal gross estate of any item of property

or interest in property,

(2) the allowance of any item claimed as a deduction from the federal gross estate, or

(3) the value or amount of any such item, shall also determine the same issue for purposes of the tax under this article unless such final federal determination is shown by a preponderance of the evidence to be erroneous.

(b) Definition.-- For the purpose of this section a final federal determination means:

(1) A decision by the tax court or a judgment, decree or other order by any court of competent jurisdiction which has become final.

(2) A final disposition by the secretary of the treasury or his delegate of a claim for refund. Such disposition shall be deemed to have occurred--

(A) as to items of the claim which are allowed, upon allowance of refund or upon disallowance of the claim by reason of offsetting items; and

(B) as to items of the claim which are disallowed, or as to items applied by the secretary of the treasury or his delegate as an offset against the claim, (i) upon expiration of the time for instituting suit for refund with respect to such items, unless suit is instituted before the expiration of such time, or (ii) upon filing with the surrogate or appraiser a written statement, in such form as may be required by the tax commission, that suit for refund will not be instituted.

(3) A closing agreement made under section seven thousand one hundred twenty-one of the internal revenue code.

(4) An assessment pursuant to a waiver of restrictions on assessment, or a notification in writing issued by the secretary of the treasury or his delegate that the federal estate tax return has been accepted as filed where such notification is issued after an audit of such return, unless the executor shall have filed with the commissioner of taxation and finance a written statement, in such form as may be required by the commissioner, that a claim for refund of federal estate taxes has been or will be filed.

(c) Items determined.-- If there has been a final federal determination with respect to a decedent's federal estate tax, any item entering into the computation of such tax shall be deemed to have been

the subject of the final federal determination, whether or not specifically adjusted thereby.

Part II

RETURNS AND PAYMENT OF TAX

§ 971. Estate tax returns. (a) Returns by executor. (1) Residents. In the case of the estate of every individual dying on or after April first, two thousand fourteen, who at his or her death was a resident of New York state, his or her executor shall make a return with respect to the estate tax imposed by section nine hundred fifty-two of this article if the decedent's federal gross estate, increased by the amount of any gift includible in his or her New York gross estate, exceeds the basic exclusion amount applicable to the decedent's date of death in paragraph two of subsection (c) of section nine hundred fifty-two of this article.

(2) Nonresidents. In the case of the estate of every individual dying on or after April first, two thousand fourteen, who at his or her death was not a resident of New York state, if such individual's federal gross estate includes real or tangible personal property having an actual situs in New York state, the executor shall make a return with respect to the estate tax imposed by section nine hundred sixty of this article if the decedent's federal gross estate, increased by the amount of any gift includible in his or her New York gross estate, exceeds the basic exclusion amount applicable to the decedent's date of death in paragraph two of subsection (c) of section nine hundred fifty-two of this article.

(b) Joint fiduciaries. If two or more executors are acting jointly, the return may be made by any one of them.

(c) Tax a debt. Any tax under this article, and any increase, interest or penalty thereon, shall, from the time of the death of the decedent, be a debt owed by the estate of the decedent and from the time it is due and payable, be a personal debt of the person liable to pay the same, to the state of New York.

(d) Cross reference. For requirement of filing federal returns, see subsection (b) of section nine hundred seventy-seven of this article.

§ 971-a. Additional proceedings in estates of non-domiciliary

decedents. (a) Condition to appointment of executor for nonresident. Every petition for ancillary letters testamentary or of administration and every petition for original letters testamentary or of administration in the estate of a decedent who at the time of his death was not domiciled in this state, shall set forth the commissioner of taxation and finance as a party to be cited, and upon the presentation thereof the surrogate shall issue a citation directed to the commissioner. The decree of the surrogate awarding the letters may contain any provision for the payment of the tax imposed by this article or the giving of security therefor which might be made by such surrogate if the commissioner of taxation and finance were a creditor of the decedent.

(b) Notification in case of estate of nonresident. Whenever the commissioner of taxation and finance is cited on the issuance of original letters testamentary or of administration in the estate of a decedent not domiciled in this state as provided in subsection (a) of this section, the commissioner shall notify the proper taxing authorities of the state in which such decedent was domiciled of the fact of the filing of the petition and shall furnish information submitted by the executor to the commissioner as to the decedent's property and value thereof. No executor shall be entitled to a final accounting or discharge in a surrogate's court of this state unless he shall have filed with the surrogate, in addition to the certificate or final receipt required under section nine hundred eighty-one of this article, (i) proof that all death taxes, together with interest and penalties thereon, due to the state of domicile of such decedent or to any political subdivision thereof have been paid or secured, or (ii) a consent by the proper taxing authorities of the state of domicile to such final accounting or discharge.

(c) Domiciliary state's tax authority as interested party. The official charged with administration of the death tax laws of the domiciliary state shall be deemed a party interested in the estate of a deceased individual who at his death was not a resident of New York state, to the extent that such official may petition for an accounting therein if the death taxes, interest and penalties due to such

domiciliary state or a political subdivision thereof are not paid or secured. Upon such petition the surrogate may decree such accounting and may decree the remission to a fiduciary appointed by the domiciliary probate court of so much of the personal property of such estate as may be necessary to insure the payment to the state of domicile, or political subdivision thereof, of the amount of death taxes, interest and penalties due to such state or political subdivision.

(d) Requirement of reciprocity. This section shall apply to the estate of a deceased individual who at his death was not a resident of New York state only (i) if the laws of the state of his domicile contain a provision, of any nature or however expressed, whereby this state is given reasonable assurance of the collection of its death taxes, interest and penalties, from the estates of decedents dying domiciled in this state in cases where the estates of such decedents are being administered by the probate court of such other state by virtue of original letters testamentary or of administration, or (ii) if the state in which such decedent was domiciled does not grant letters testamentary or of administration in estates of nonresidents, until after letters have been issued by the state of domicile.

(e) Cooperation by commissioner of taxation and finance. The commissioner of taxation and finance shall cooperate with the taxing authorities of the state of domicile of a deceased individual who at his death was not a resident of New York state and shall furnish them with such information as may be requested with respect to any such estate. The provisions of this section shall be liberally construed to insure that the state of domicile of a decedent shall receive any death taxes together with interest and penalties thereon, due to it from such decedent's estate.

(f) Definition of state. For the purpose of this section, the term "state" means the states of the United States, the District of Columbia, any territory of the United States and the Dominion of Canada or any province thereof.

§ 972. Time and place for filing returns. (a) Time for filing returns. A person required to make and file a return under this article shall file returns, statements, or other documents, or copies thereof, within

nine months after the date of the decedent's death.

(b) Place for filing returns. The commissioner of taxation and finance shall prescribe the place for filing any return, statement, other document, or copies thereof, required to be filed with such commissioner pursuant to this article.

(c) Simultaneous filing of returns with surrogate's court. If required by rule of any surrogate's court, a person required to make and file returns, statements, or other documents, or copies thereof, under this article shall simultaneously file a duplicate copy of such returns, statements, or other documents, or copies thereof, with the surrogate's court in the county where the petition was filed to commence either a proceeding for probate of a will or a proceeding for administration in intestacy. The office of court administration shall promptly notify the commissioner after receiving notice that any surrogate's court has adopted such a rule, so that the commissioner will be able to properly inform taxpayers of their responsibility to file such returns, statements or other documents with the surrogate's court.

§ 973. Signing of returns and other documents. (a) General. Any return, statement or other document required to be made pursuant to this article shall be signed in accordance with instructions prescribed by the commissioner of taxation and finance.

(b) Signature presumed authentic. The fact that the name of the executor or other individual is signed to a return, statement or other document, or copies thereof, shall be prima facie evidence for all purposes that the return, statement or other document, or copy was actually signed by him.

(c) Certifications. The making or filing of any return, statement or other document, or copy thereof, required to be made or filed pursuant to this article, including a copy of a federal return, shall constitute a certification by the person making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 974. Payment of tax. (a) General. The tax imposed by this article

shall without assessment, or notice and demand be paid at the time prescribed in this article by the executor, subject to being by him charged against and collected from the persons interested in the estate, to the commissioner of taxation and finance.

(b) Payment. The entire tax due shall, unless otherwise provided in this article, be paid on or before the date fixed for filing the return required under this article.

(c) Cross reference. For interest on underpayment, see sections six hundred eighty-four and nine hundred ninety of this chapter.

§ 975. Liability for tax. (a) Duty of executor to pay tax. (1) The tax imposed by this article shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in accordance with the rules of apportionment of section 2-1.8 and other relevant provisions of the estates, powers and trusts law.

(2) If the tax imposed by this article, or any part thereof, is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts or other charges against the estate, it being the purpose and intent of this section that so far as is practicable and unless otherwise directed by the will or non-testamentary instrument of the decedent, the tax shall be paid out of the estate before its distribution.

(b) Liability of executor. An executor who pays, in whole or in part, any debt due by the estate for which he or she acts, except for a debt owed to the United States or to New York state, or who distributes any asset of the estate, prior to the payment in full of the tax imposed by this article, shall be answerable in his or her own person and estate for the payment of such tax to the extent that the assets of the estate have been so paid out or distributed. The liability of the executor

under this subsection shall continue until his or her discharge as provided in section nine hundred eighty-one of this article.

(c) Liability of life insurance beneficiaries. Unless the decedent directs otherwise in his or her will, if any part of the New York gross estate on which tax has been paid consists of proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the federal taxable estate, reduced by the value of any real or tangible personal property located outside New York state, and increased by any federal estate tax deductions attributable to such property. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section two thousand fifty-six of the internal revenue code (relating to marital deduction), this section shall not apply to such proceeds.

(d) Liability of recipients of property over which decedent had power of appointment. Unless the decedent directs otherwise in his or her will, if any part of the New York gross estate on which the tax has been paid consists of the value of property included in the gross estate under section two thousand forty-one of the internal revenue code, the executor shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the federal taxable estate, reduced by the value of any real or tangible personal property located outside New York state, and increased by any federal estate tax deductions attributable to such property. If there is more than one such person, the executor shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section two thousand fifty-six of the internal revenue code (relating to marital deduction), this section shall not apply to such property.

(e) Liability of transferees and others. If the tax imposed by this article is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the

exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the New York gross estate to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in section nine hundred eighty-two of this article and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth. Provided, however, where any interest in such property was held by the decedent and the decedent's surviving spouse as tenants by the entirety, such interest in such property shall be divested of the lien provided in section nine hundred eighty-two of this article.

§ 976. Extensions of time. (a) General. (1) The commissioner of taxation and finance may grant a reasonable extension of time for payment of tax (or any installment), or for filing any return, statement or other document required pursuant to this article, on such terms and conditions as he may require. Except in the case of executors who are outside the United States, no such extension for filing any return, statement or other document shall exceed six months. Except as otherwise provided in this article, no such extension for payment shall exceed twelve months from the date fixed for payment.

(2) Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this article attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then

be payable, together with interest thereon. If the commissioner of taxation and finance finds that the payment of the tax within such six months would result in undue hardship to the estate and said commissioner has approved payment in respect of such tax over a longer period, he may extend the time for a payment for a reasonable period not in excess of three years from the expiration of such six months. The postponement of the payment of any such amount shall be under such regulations as the commissioner of taxation and finance may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall comply with subsection (c) of this section (relating to furnishing of security).

(3) If the commissioner of taxation and finance finds that the payment on the due date of any part of the amount of the tax imposed by this article would result in undue hardship to the estate, he may extend the time for payment for such period as he may deem reasonable, but not to exceed four years from the date of death, and may require payment to be made in annual installments.

(b) Whenever the commissioner extends the time for the payment of tax under this section, that portion of the tax as to which an extension is granted shall bear interest from the date the tax is required to be paid, to the date of payment without regard to any extension of time for the payment of the tax or filing of the return, at the rate prescribed in subsection (a) of section six hundred eighty-four of this chapter.

(c) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the commissioner of taxation and finance may require the taxpayer to furnish a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to such commissioner in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as such commissioner may require.

(d) Cross reference. For extensions of time for payment of estate tax where an estate consists largely of interest in closely held businesses, see section nine hundred ninety-seven of this article.

(e) If the decedent has a cause of action pending at the time of death, or a cause of action arises which is related to the decedent's

death, and any recovery under the cause of action is to be taxable under this article, the commissioner shall waive any penalty and interest associated with such cause of action which accrues from the date that the return disclosing such cause of action is filed, provided that such penalty and interest may not be waived for periods beyond one year after the date of final judgment or settlement of the cause of action.

§ 977. Requirements concerning returns, notices, records and statements. (a) General. The commissioner of taxation and finance may prescribe regulations as to the keeping of records, the content and form of returns, statements or other documents, and the filing of copies of federal estate tax returns and determinations. The commissioner may require any executor or other person, by regulation, instruction or notice served upon such person, to make such returns or documents, render such statements, or keep such records as the commissioner may deem sufficient to show whether or not such executor or other person is liable under this article for tax.

(b) Federal return. (1) If a federal estate tax return is required for federal estate tax purposes, a copy thereof, together with such summary and additional information as the commissioner of taxation and finance may prescribe, shall be filed with the return of tax under this article.

For the purposes of this article, the phrase "return, statement or other document" shall include a copy of the federal estate tax return, document or statement.

(2) If a federal estate tax return is not required for federal estate tax purposes, the return of tax under this article shall include such schedules and information as the commissioner of taxation and finance shall prescribe.

(c) Identifying numbers. (1) When required by the commissioner of taxation and finance:

(A) Inclusion in returns. Any person required under the authority of this article to make a return, statement, or other document, or copies thereof, shall include in such return, statement, or other document, or copies thereof, such identifying number as may be prescribed for securing proper identification of such person, or of the decedent.

(B) Furnishing number to other persons. Any person with respect to whom a return, statement, or other document, or copy thereof, is required under the authority of this article to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(C) Furnishing number of another person. Any person required under the authority of this article to make a return, statement, or other document, or copy thereof, with respect to another person, shall request from such other person, and shall include in any such return, statement, or other document, or copy thereof, such identifying number as may be prescribed for securing proper identification of such other person.

(2) Limitation. For purposes of subparagraphs (B) and (C) of paragraph (1) of this subsection, a return, statement, or other document, or copies thereof, of an estate, with respect to its liability for tax, shall be considered as a return, statement, or other document, or copies thereof, with respect to each beneficiary of such estate under this article.

(3) Requirement of information. For purposes of this subsection, the commissioner of taxation and finance is authorized to require such information as may be necessary to assign an identifying number to any person or estate.

(4) Use of social security account number. The social security account number issued to an individual may, except as otherwise specified by the commissioner of taxation and finance, be used as the identifying number for such individual for purposes of this title.

(d) Notice of qualification as executor. Every executor shall give notice of his qualifications as such to the commissioner of taxation and finance in such manner and at such time as may be required by the commissioner. The commissioner may provide such exemptions from the requirements of this section as he deems proper.

§ 978. Compromise agreements in cases of disputed domicile. (a) Determining tax under this article. Where the commissioner of taxation and finance claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state or states make a similar claim with respect to their state or states, the

commissioner of taxation and finance may enter into a written agreement with such taxing officials and with the executor that a certain sum shall be accepted in full payment of the tax imposed by this article, provided that said agreement also fixes the amount to be paid to such other state or states in full payment of the death taxes thereof. Full power and authority is hereby conferred upon the executor to enter into the agreement provided for herein. The execution of such agreement shall finally and conclusively fix and determine the amount of tax imposed by this article, except as otherwise provided in such agreement with respect to the valuation of estates devoted to farming or closely held business and except as provided in subsection (b) of this section, without regard to any other provision of the laws of this state.

(b) Payment of agreed tax. The executor shall pay to the commissioner of taxation and finance the amount of tax fixed in the agreement described in subsection (a) of this section. In the event the aggregate amount payable under such agreement to the states involved is less than the maximum credit allowable to the estate against the United States estate tax imposed with respect thereto, the executor forthwith shall also pay to the commissioner of taxation and finance so much of the difference between such aggregate amount and the amount of such credit, as the amount payable to the commissioner under the agreement bears to such aggregate amount.

(c) Definition. As used in this section the word "state" means any state, territory, or possession of the United States, the District of Columbia and the Dominion of Canada or any province thereof.

§ 979. Report of change in federal taxable estate, adjusted taxable gifts, additional estate tax imposed by section 2032A of the internal revenue code. (a) General. If the amount of the federal taxable estate reported on the federal estate tax return for an estate is changed or corrected by the United States internal revenue service or other competent authority, the executor shall report such change or correction in the federal taxable estate within ninety days after the final determination of such change or correction or as otherwise required by the commissioner of taxation and finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any executor

filing an amended federal estate tax return shall also file within ninety days thereafter an amended return under this article, and shall give such further information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate.

(b) Final federal determination. The executor of every estate which is subject to the United States estate tax shall file with the commissioner of taxation and finance a copy of the final federal determination thereof forthwith after the same is made.

§ 979-a. Notification by surrogate to commissioner concerning tax. A surrogate, in his discretion, may notify the commissioner of taxation and finance of any and all matters which come to the surrogate's attention as a result of any proceeding commenced in surrogate's court, or the filing therein of papers or documents, and which affect the tax imposed by this article.

§ 980. Change of election. The commissioner of taxation and finance may change, by regulation, any election expressly authorized by this article in order to conform such election to its equivalent federal election.

Part III

Liens, Discharges and Surrogate's Court

§ 981. Discharge from liability. (a) Certificate of no tax due. If a return has been filed and the commissioner of taxation and finance determines that no tax is due, he shall issue to the executor a certificate that no tax is due.

(b) Final receipt for tax due. If a return has been filed and the commissioner of taxation and finance is satisfied that the tax paid is the full amount of tax due, he shall issue to the executor a final receipt for tax due.

(c) Final receipt for agreed tax. If the commissioner of taxation and finance enters into an agreement under section nine hundred seventy-eight of this article (relating to compromise agreements in cases of disputed domicile) and if the amount due under such section is paid, he shall issue to the executor a final receipt for tax due.

(d) Discharge of executor upon accounting. If a return is required to be filed under section nine hundred seventy-one of this article, except as provided in subdivision three of section eighteen hundred four of the surrogate's court procedure act, no executor shall be entitled to a final accounting or discharge in the surrogate's court unless he has filed with the surrogate's court a certificate under subsection (a) or a final receipt under subsection (b) or (c) of this section. For additional requirement in case of the estate of a nonresident, see section nine hundred seventy-one-a of this article.

(e) Duplicate certificate or receipt. Any person interested in the estate shall, upon request, be entitled to a duplicate certificate of no tax due or duplicate final receipt for tax due or for agreed tax upon the payment of ten dollars to the commissioner of taxation and finance.

(f) Record of access to safe deposit boxes. The commissioner of taxation and finance may by regulation prescribe requirements for safe deposit companies, trust companies, banks, corporations, firms or other persons holding safe deposit boxes for rental to the public to maintain and retain records as to the persons who have had access to such safe deposit boxes.

(g) Cross reference. For criminal penalties for unlawful entry of safe deposit box, see article thirty-seven of this chapter.

§ 982. Lien for estate tax. (a) General. Unless the tax imposed by this article is sooner paid in full, it shall be a lien upon all property includible in the New York gross estate of the decedent for fifteen years from the date of death of the decedent, except that such part of the New York gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. In the case of a decedent who at his death was not a resident of New York state, the lien shall apply to all property subject to tax under this

article.

(b) Prior mortgages on real property. The lien under subsection (a) of this section shall be subject to the lien of any mortgage indebtedness on real property incurred in good faith prior to the time when the tax under this article became a lien. Such real property may be sold and conveyed free from any such tax lien in an action to foreclose such mortgage to which the people of the state of New York shall have been made a party defendant by reason of the existence of the lien for the tax. The lien may then attach to any surplus moneys which result from such sale, to be determined in the proceedings for the distribution of such surplus moneys.

(c) Discharge of lien.--Subject to such rules or regulations as the commissioner may prescribe, the commissioner may issue a certificate of discharge of any or all of the property subject to the lien imposed by this section if he or she finds that the liability secured by such lien has been fully satisfied or provided for, upon application for such discharge. A certificate of discharge issued under this subsection shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(d) Recording of certificate of discharge. A certificate of discharge issued under subsection (c) of this section may be recorded in the office of the recording officer of the county where real property described therein is situated.

(e) Power of executor to sell. The executor shall have full power to sell so much of the property of the estate as will enable him to pay the tax imposed by this article in the same manner that he is permitted by law to do for payment of debts of the estate.

§ 983. Surrogates; assistants and clerks; district tax attorneys. (a) The commissioner of taxation and finance may, upon the recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, and shall fix their salaries within the amounts appropriated for that purpose:

(1) In New York county, a transfer and estate tax assistant; a deputy transfer and estate tax assistant; a transfer and estate tax clerk; an assistant clerk; a recording clerk; a stenographer; and shall be

entitled to expend not more than seven hundred fifty dollars a year in such office for the expenses necessarily incurred in the administration of taxes under this article and articles ten and ten-C (as such article ten-C existed before its repeal) of this chapter.

(2) In Kings county, a transfer and estate tax assistant; a deputy transfer and estate tax assistant; two transfer and estate tax clerks; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the administration of taxes under this article and articles ten and ten-C (as such article ten-C existed before its repeal) of this chapter.

(3) In Erie county, a transfer and estate tax clerk.

(4) In Westchester county, a transfer and estate tax clerk and a transfer and estate tax assistant.

(5) In Albany county, a transfer and estate tax clerk.

(6) In Queens county, two transfer and estate tax clerks and a typist.

(7) In Onondaga county, a transfer and estate tax clerk; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the administration of taxes under this article and articles ten and ten-C (as such article ten-C existed before its repeal) of this chapter.

(8) In Monroe county, a transfer and estate tax clerk; and shall be entitled to expend not more than three hundred dollars a year for expenses necessarily incurred in the administration of taxes under this article and articles ten and ten-C (as such article ten-C existed before its repeal) of this chapter.

(9) In Dutchess county, a transfer and estate tax clerk.

(10) In Oneida county, a transfer and estate tax clerk.

(11) In Suffolk county, two transfer and estate tax clerks.

(12) In Ulster county, a transfer and estate tax clerk.

(12-a) In Otsego county, a transfer and estate tax clerk.

(13) In Richmond county, a transfer and estate tax clerk.

(14) In Nassau county, two transfer and estate tax clerks.

(15) In Bronx county, a transfer and estate tax clerk and a transfer and estate tax assistant.

(16) In Orange county, a transfer and estate tax clerk.

(b) The positions of assistants and clerks in each surrogate's office described in subsection (a) of this section may be filled by promotion

from among officers and employees of such office. Persons occupying such positions of assistants and clerks in each surrogate's office may be eligible for promotion to other positions in such office.

(c) In each county of the state having a population of over one million, and in each county of the state having a population of over three hundred thousand inhabitants, included in or adjoining a city or county containing a population of over one million inhabitants, the surrogate or surrogates shall each annually receive for compensation for services rendered in connection with the administration of transfer and estate taxes the sum of six thousand eight hundred eighty-two dollars in addition to the salary or compensation paid to such surrogate by the county, but such salary and compensation shall not together exceed the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included. Where a city pays the salary of a surrogate of a county wholly included within such city and such salary is equal to the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included, the state shall pay such city on behalf of such county the sum of six thousand eight hundred eighty-two dollars multiplied by the number of surrogates in such county. Where a county pays the salary of a surrogate and such salary is equal to the entire compensation paid to a justice of the supreme court in the judicial district in which the county is included, the state shall pay such county the sum of six thousand eight hundred eighty-two dollars multiplied by the number of surrogates in such county. The additional compensation provided for by this subsection shall be payable in the same manner as salaries and expenses under this section. The moneys provided to be paid by this subsection to a city or county in lieu of additional compensation shall be paid upon warrant of the comptroller drawn in favor of the city treasurer of the city or of the county treasurer of the county due such amount, which sum shall be paid to said city or county treasurer out of any moneys in the treasury not otherwise appropriated.

(d)(1) In each county of the state the surrogate shall receive annually for such services rendered in connection with the administration of transfer and estate taxes as are not incident to holding courts or performing duties as a judicial officer the respective

sums following:

(A) In any such county having a population of less than ten thousand, five hundred seventy-three dollars;

(B) In any such county having a population of ten thousand or more but less than fifty thousand, one thousand eight hundred eighty-six dollars;

(C) In any such county having a population of fifty thousand or more but less than one hundred thousand, two thousand two hundred twenty-one dollars;

(D) In any such county having a population of one hundred thousand or more but less than two hundred thousand, three thousand two hundred thirty dollars;

(E) In any such county having a population of two hundred thousand or more but less than five hundred thousand, four thousand two hundred fifty-one dollars;

(F) In any such county having a population of five hundred thousand or more, six thousand eight hundred fifty-one dollars.

(2) No provision of this subsection shall repeal or affect the provisions of subsection (c) of this section, but the provisions of this subsection shall apply to the surrogate or surrogates mentioned in subsection (c) of this section, provided that any payment or payments made to him or them, whether under this subsection or subsection (c), or both, shall not in all exceed the sum of six thousand eight hundred eighty-two dollars annually. Such sum shall not, however, in addition to the salary or compensation paid to any surrogate by the state, together exceed the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included. The moneys provided to be paid for services by this subsection shall be payable in the same manner as salaries and expenses under this section. Such salaries and expenses shall be paid upon proper vouchers, out of moneys appropriated for such purpose.

(e) The commissioner of taxation and finance is authorized to designate and retain counsel to represent the department and to pay the expenses thereby incurred out of money appropriated for such purpose in the following circumstances:

(1) when the department is cited as a party under section nine hundred seventy-one-a of this article,

(2) in a special proceeding under section nine hundred ninety-eight or

any appeal therefrom, of this article,

(3) to examine securities, deposits or other assets pursuant to subsection (e) of section nine hundred seventy-five of this article, and

(4) for such other duties under this chapter as the commissioner may assign.

PART IV PROCEDURE AND ADMINISTRATION

§ 990. Applicability of other tax law provisions. (a) General. Except as otherwise provided in this article, all of the provisions of sections six hundred eighty-one through six hundred eighty-eight and six hundred ninety-one through six hundred ninety-seven of this chapter shall apply to the provisions of this article with the same force and effect as if the language of those sections had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with or not relevant to this article and except as modified in subsection (b) of this section or with such other modifications as may be necessary to adapt the language of such provisions to the provisions of this article.

(b) Modifications. Sections six hundred eighty-one through six hundred eighty-eight and six hundred ninety-one through six hundred ninety-seven shall be read as modified by this subsection.

(1) The phrase "income tax" shall be read as "estate tax".

(2) The phrases "income" and "taxable income" shall be read as "federal taxable estate".

(3) The phrase "section six hundred fifty-nine" shall be read as "section nine hundred seventy-nine".

(4) The phrase "federal income tax" shall be read as "federal estate tax".

(5) The phrase "taxable year" shall be read as "tax under this article".

(6) Subsection (d) of section six hundred eighty-three shall be read as follows: The tax may be assessed at any time within six years after the return was filed if an estate omits from its federal gross estate,

federal taxable estate or New York gross estate an amount properly includible therein which is in excess of twenty-five percent of the amount stated in the return of the federal gross estate, federal taxable estate or New York gross estate.

(7) References to sections six hundred eighty-nine or six hundred ninety of this chapter shall be deemed references to section nine hundred ninety-eight; references to the hearing process shall be deemed references to the procedures under section nine hundred ninety-eight; references to the division of tax appeals or the tax appeals tribunal in relation to the administration of the hearing process shall be deemed references to the surrogate's court; and references to filing a petition shall be deemed references to commencing a special proceeding under section nine hundred ninety-eight.

(8) In subsection (e) of section six hundred eighty-three of this chapter, the following sentence is added: "The running of the period of limitation for the collection of any tax imposed by this article shall be suspended for the period of any extension of time for payment granted under the provisions of subsection (a) of section nine hundred seventy-six and section nine hundred ninety-seven of this article."

(9) In subsection (a) of section six hundred eighty-four of this chapter, the phrase "to the date paid" shall be read as "to the date paid, except as otherwise provided in subsection (j) of section nine hundred ninety-seven of this article".

(10) In subsection (k) of section six hundred eighty-five of this chapter, the reference to "subsection (b) of section six hundred fifty-eight" shall be read as "subsection (c) of section nine hundred seventy-seven of this article."

(11) In subsection (a) of section six hundred eighty-six of this chapter, the phrase "person who made the overpayment" shall mean "estate, persons interested in the estate or other person making the overpayment".

(12) In subsections (f) and (i) of section six hundred eighty-seven of this chapter, the phrases "for taxable year" and "for such year" shall be read as "in respect of the tax imposed by this article" and, in subsection (i) thereof, the phrase "the fifteenth day of the fourth month following the close of his taxable year" shall be read as "such last day, determined without regard to any extension of time granted".

(13) In subsection (b) of section six hundred ninety-one of this chapter, the term "address given in the last return filed by him" shall be read as "address given in the notice of qualification filed by the executor under subsection (d) of section nine hundred seventy-seven of this article".

(14) In section six hundred ninety-two of this chapter, the term "person" shall be read as "estate or any other person."

(15) In section six hundred ninety-three of this chapter, the term "transferee" shall include

(A) any donee, heir, testamentary beneficiary or distributee, and

(B) any other person who under section nine hundred seventy-five of this article is personally liable for any part of the tax imposed by this article, and

(C) an executor to the extent of his personal liability under section nine hundred seventy-five of this article for the tax imposed by this article;

and in subsection (d) of such section, the reference to subsection (e) of section six hundred ninety-seven of this chapter shall mean section nine hundred ninety-four of this article.

§ 991. Interest accrual relief for additional tax attributable to newly-discovered abandoned property. Notwithstanding any other provision of law, in computing the interest due on an addition to tax owed by an estate attributable to the inclusion in the estate's federal gross estate of an asset held by the comptroller as abandoned property, the commissioner shall apply the interest rate used by the comptroller, pursuant to section fourteen hundred five of the abandoned property law, in computing the interest due on such abandoned property while in the comptroller's possession (including a zero rate if the comptroller did not pay interest on such property) if, as of the date prescribed for the filing of a return required by this article, including any extensions granted for filing, information pertaining to the asset had not yet appeared in the public records of abandoned property required to be maintained by the comptroller pursuant to section fourteen hundred one of the abandoned property law.

§ 992. Addition to tax in the case of valuation understatement. In the case of any underpayment of a tax imposed by this article which is attributable to a valuation understatement, there shall be added to the tax an amount equal to the applicable percentage of the underpayment so attributed.

(a) For purposes of this section, the applicable percentage shall be determined under the following table:

If the valuation claimed is

the following percent of the

The applicable

correct valuation:

percentage is:

fifty percent or more but

not more than sixty-six

and two-thirds percent ten

forty percent or more but

less than fifty percent twenty

less than forty percent thirty

(b) For purposes of this section, there is a valuation understatement if the claimed value of any property is sixty-six and two-thirds percent or less of the amount determined to be the correct amount of such valuation.

(c) This section shall not apply if the underpayment is less than one thousand dollars with respect to the estate of the decedent.

(d) The commissioner may waive all or any part of the addition to tax provided by this section on showing by the executor that there was a reasonable basis for the claimed valuation and that such claim was made in good faith.

§ 994. Secrecy requirement and penalties for violation. (a) Secrecy requirements. (1) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of taxation and finance, any officer or employee of the department of

taxation and finance, any person engaged or retained by such department on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the value of the estate or any particulars set forth or disclosed in any report or return required under this article.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of taxation and finance in an action or proceeding under the provisions of this chapter, or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner of taxation and finance is a party or claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the reports, returns or facts shown thereby are directly involved in such action or proceeding or in any proceeding under the surrogate's court procedure act to assist the surrogate to carry out his powers or duties under such act including, but not limited to the determination of the amount of court fees required to be paid under article twenty-four of such act, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

(3) Nothing herein shall be construed to prohibit the delivery to a surrogate or to any person liable for the payment of the tax imposed by this article or such liable person's duly authorized representative of a certified copy of any return, correspondence or other data filed in connection with the tax for which such person is liable or a copy of any workpaper, document or other data prepared or developed by the department during the processing, audit or investigation of that return or the collection of the tax derived therefrom or the delivery of any such copy to any person interested in the estate, any heir at law, next of kin, or beneficiary under the will, of such decedent, or a donee of property, but only if the commissioner or the surrogate, as the case may be, finds that such person, heir at law, next of kin, beneficiary, or

donee has a material interest which will be affected by information contained therein. Further, nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the return of any person (or any report related to such return or any copy mentioned in the preceding sentence) who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner or the attorney general or has been instituted, or the inspection of the reports or returns required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a taxpayer under this article. Further, nothing contained herein shall be construed to prevent an examination of any documents concerning an estate that are under the control of the surrogate by a title abstractor, attorney at law or title examiner or to prevent a title abstractor, attorney at law or title examiner from applying for and obtaining a discharge of lien in accordance with subsection (c) of section nine hundred eighty-two of this article or from receiving information needed in order to obtain such discharge, for the sole purpose of insuring title to real property or a chattel real and/or preparing a title abstract, title search, or title report in connection with real property or chattel real. The commissioner or the surrogate, as the case may be, may require such title abstractor, attorney at law or title examiner to certify that the sole purpose of such examination is for insuring title to real property or a chattel real and/or preparing a title abstract, title search or title report. Furthermore, nothing herein shall be construed to prohibit the delivery to a person entitled thereto under the provisions of this article of a receipt or certificate that the tax imposed under this article has been paid, in whole or in part.

(4)(A) Any officer or employee of the state who willfully violates the provisions of this subsection shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

(B) Cross-reference: For criminal penalties, see article thirty-seven

of this chapter.

(b) Cooperation with the United States and other states.

Notwithstanding the provisions of subsection (a) of this section, the commissioner of taxation and finance may permit the secretary of the treasury of the United States or his delegates, or the proper tax officer of any state imposing an estate, inheritance or death tax on the transfer of the estate of a deceased individual or on the transfer by will or the intestate laws of such state from any person dying seized or possessed of property in such state, or the authorized representative of either such officer, to inspect any return filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply him with information concerning an item contained in any such return, or disclosed by an investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commissioner of taxation and finance or such other officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the commissioner of internal revenue or his authorized representative such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury of the United States or his delegates, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his delegates. Where the commissioner of taxation and finance has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information. Nothing herein shall be construed to prohibit the delivery of any return or the furnishing of information thereon by the commissioner of taxation and finance to the taxing authorities of another state for the purpose of complying with the provisions of section nine hundred seventy-one-a of

this article relating to additional proceedings in estates of nondomiciliary decedents.

(b-1) Cooperation with investigations by certain committees of the United States Congress. (1) Notwithstanding the provisions of subsection (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year reports or returns specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing

any report or return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such report or return, and any social security numbers, account numbers and residential address information.

(2) No reports or returns shall be furnished pursuant to this subsection unless the chairperson of the requesting committee certifies in writing that such reports or returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal reports or returns or report or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested reports or returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

(c) Procedure and preservation of returns. (1) Reports and returns or in lieu thereof, copies or reproductions of such reports and returns, shall be preserved for eighteen years and thereafter until the commissioner of taxation and finance orders them to be destroyed.

(2) Requests for the inspection or disclosure of a report or return and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the commissioner of taxation and finance.

(3) (A) A reproduction of a report or return shall, upon written request, be furnished to any person to whom disclosure or inspection of such report or return is authorized under this section. A reasonable fee may be prescribed for furnishing each page of such reproduction.

(B) Any reproduction of any report, return, document, or other matter made in accordance with this subsection shall have the same legal status as the original, and any such reproduction shall be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(d) Filing returns and making payment to depository banks. Notwithstanding the provisions of subsection (a) of this section, the

commissioner of taxation and finance, in his discretion, may require or permit any or all of the estates, executors, beneficiaries and other persons liable for any tax imposed by this article to make payments on account of any tax, penalty or interest imposed by this article to banks, banking houses or trust companies designated by the commissioner of taxation and finance and to file returns with such banks, banking houses or trust companies as agents of the commissioner of taxation and finance, in lieu of making such payment to, or filing such returns with the commissioner of taxation and finance. However, the commissioner of taxation and finance shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to this article.

§ 997. Extensions of time for payment of estate tax where estate consists largely of interest in closely held businesses. The provisions of section 6166 of the internal revenue code shall apply to this section to the same extent as if such section of such code were contained in and made part of this section (whether or not a federal estate tax return is required to be filed) except as provided herein:

(a) The phrase "adjusted gross estate" shall be read as "adjusted federal gross estate determined without reference to paragraphs (1), (2) and (3) of subsection (a) of section nine hundred fifty-four" of this article.

(b) The phrase "section 2001" shall be read as "section nine hundred fifty-two or section nine hundred sixty" of this article.

(c) The phrase "the date prescribed by section 6151(a) for payment of the tax" shall be read as "the date prescribed by this article for the payment of the tax (without regard to any extension of time)".

(d) The term "secretary" shall be read as "commissioner of taxation and finance".

(e) Election. The election under this section shall not be allowed unless a similar election was made and allowed with respect to the federal estate tax return required to be filed under the provisions of the internal revenue code. If such election was made for the purposes of the federal estate tax, the time for making the election under this article shall be the same as is required under the federal estate tax.

Where no federal estate tax return is required to be filed, the election with respect to the tax imposed under this article shall be made no later than the date prescribed for the filing of the return under this article (including extensions thereof) or any time thereafter as the commissioner of taxation and finance may by regulation prescribe.

(f) The commissioner of taxation and finance may, at any time, require a bond to be filed with him, which bond has been issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to such commissioner, in an amount not exceeding twice the amount for which the time for payment has been extended under this section, to secure the payment of the estate tax and interest, the time for payment of which has been extended under this section.

(g) If an acceleration of payment occurs with respect to the tax imposed by this article, the extension of time for payment of the tax imposed by this article shall cease to apply and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the commissioner of taxation and finance. If any such acceleration of payment is avoided by a payment within six months of the due date thereof, then the provisions of subsection (j) of this section with respect to a two percent rate of interest shall not apply to said payment and there is imposed a penalty of five percent of the amount of such payment multiplied by the number of months, or fractions thereof, after the due date of the payment and before payment is made. Such acceleration of payment shall occur if:

(1) any installment of estate tax imposed by this article is not paid on or before the date fixed for its payment (including any extension of time for the payment of such installment), or

(2) the executor has been notified by the commissioner of taxation and finance that a bond or other security is required, but no such bond or other security has been filed within thirty days from the date of mailing of such notification, or

(3) an acceleration of payment has occurred with respect to the election by the executor to pay part or all of the federal estate tax in installments or, where no federal estate tax return is required to be filed, an acceleration of payment has occurred by virtue of the

provisions of subsection (g) of section 6166 of the internal revenue code.

(h) The commissioner of taxation and finance may, for reasonable cause and if his interests would not be jeopardized thereby, extend the time for payment of any part of any installment under this subsection, including any part of a deficiency prorated to any installment under this subsection, for a reasonable period (1) not in excess of ten years from the date prescribed for the filing of the return under this article (without regard to any extension of time to file) or (2) if the date prescribed for such filing is earlier than the date which is twelve months after the due date of the last installment, such later date.

(i) If the time for payment of any amount of tax has been extended under this subsection, interest shall be paid annually together with the installment of tax on any unpaid portion of such amount (including the amount of any deficiency), at the rate prescribed in subsection (b) of section nine hundred seventy-six of this article with respect to extensions of time for payment of estate tax (other than the extensions of time provided for in this section) or as otherwise provided for in subsection (j) of this section.

(j) If the time for payment of any amount of tax has been extended under this section, the provisions of section 6166 of the internal revenue code applicable to the payment of interest are modified as follows:

(1) Interest on the two percent portion of such amount shall be paid at the rate of two percent per annum. For purposes of this section, the amount of any deficiency which is prorated to installments payable under this section, shall be treated as an amount of tax payable in installments under such section.

(2) For purposes of this paragraph, the term "two percent portion" means the lesser of fifty-four thousand dollars or the amount of the tax imposed by this article which is extended as provided in this section.

(3) If the amount of tax imposed by this article which is extended exceeds the two percent portion, any payment of a portion of such amount shall, for purposes of computing interest for periods after such payment, be treated as reducing the two percent portion by an amount which bears the same ratio to the amount of such payment as the amount of the two percent portion (determined without regard to this paragraph)

bears to the amount of tax which is extended.

(4) Interest on any portion of the amount of tax which is not includible in the two percent portion of such amount shall be payable at the rate provided for in subsection (i) of this section.

(5) (A) Interest payable on any unpaid portion of the amount of tax due attributable to the first five years after the date prescribed for payment of the tax shall be paid annually;

(B) interest payable on any unpaid portion of such amount of tax attributable to any period after the five year period referred to in subparagraph (A) of this paragraph shall be paid annually at the same time as and as part of, each installment payment of the tax;

(C) in the case of a deficiency to which subsection (e) of section 6166 of the internal revenue code applies is determined after the close of the five year period referred to in subparagraph (A) of this paragraph, interest attributable to such five year period, and interest assigned under subparagraph (B) of this paragraph to any installment, the date of payment of which has arrived on or before the date of such determination, shall be paid upon notice and demand from the commissioner of taxation and finance; and

(D) if the executor has selected a period shorter than five years, such shorter period shall be substituted for five years in subparagraphs (A), (B) and (C) of this paragraph. Any period of time selected for the purposes of the tax under this article shall in no event be greater than the period of time selected for the purpose of the estate tax imposed by the internal revenue code.

(k) The lien of the tax provided for in section nine hundred eighty-two of this article shall be applicable to the same extent as if no election had been made to extend the time for payment of estate tax under this section.

§ 998. Petition to the surrogate's court and appeal. (a) General. A taxpayer shall have the right to protest a notice of deficiency or a notice of disallowance of a claim for refund issued by the commissioner of taxation and finance with respect to tax under this article as provided in this section. A proceeding under this section shall be a special proceeding under article four of the civil practice law and

rules and shall be commenced by filing a notice of petition and verified petition with the surrogate's court and service of such notice of petition and verified petition on the commissioner of taxation and finance or the commissioner's attorney. In any county which has designated a transfer and estate clerk of the court, the filing of the notice of petition and verified petition with the surrogate's court shall be effected by filing such notice of petition and verified petition with such clerk. The notice of petition, together with the petition and any affidavits specified in the notice, shall be so filed and served at least forty-five days before the time at which the petition is noticed to be heard. An answer and supporting affidavits, if any, shall be served at least ten days before such time. A reply, together with supporting affidavits, if any, shall be served at least five days before such time. No petition shall be denied without opportunity for a hearing of any issues of fact raised therein.

(b) Conciliation conferences. The provisions of subdivision three-a of section one hundred seventy of this chapter regarding conciliation conferences in the bureau of conciliation and mediation services shall be applicable with respect to a notice of deficiency or disallowance of a refund of tax under this article provided, however, the references to "the division of tax appeals" shall be deemed to be references to "the surrogate's court" for purposes of the tax under this article and references to filing a petition shall be deemed to be references to the commencement of a special proceeding under this section.

(c) Jurisdiction and venue. The surrogate's court of every county having jurisdiction of the estate of a decedent under the provisions of sections two hundred five and two hundred six of the surrogate's court procedure act shall have jurisdiction of proceedings under this section. Venue of such proceedings shall be as provided in such sections.

(d) Petition for review of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency of estate tax, the taxpayer may commence a special proceeding pursuant to this section in the surrogate's court for review of the deficiency. Such petition may also assert a claim for refund of tax under this article, subject to the limitations of subsection (g) of section six hundred eighty-seven of this chapter, as made applicable to the tax imposed

under this article by section nine hundred ninety.

(e) Petition for refund. (1) A taxpayer may commence a special proceeding with the surrogate's court under this section for the amounts asserted in a claim for refund if--

(A) the taxpayer has filed a timely claim for refund with the commissioner of taxation and finance,

(B) the taxpayer has not previously commenced a special proceeding under subsection (d) regarding the tax imposed by this article with respect to the death of the same decedent unless the petition under this subsection relates to a separate claim for refund properly filed under subsection (f) of section six hundred eighty-seven, as made applicable to the tax imposed by this article by section nine hundred ninety, and

(C) either (i) six months have expired since the claim was filed, or (ii) the commissioner has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part.

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

(f) Assertion of deficiency after filing petition.

(1) Petition for review of deficiency. If a taxpayer commences a special proceeding for review of a deficiency, the commissioner may assert and the surrogate's court shall have power to determine a greater deficiency than asserted in the notice of deficiency and the commissioner may assert and the surrogate's court shall have power to determine any addition to tax or penalty.

(2) Petition for refund. If the taxpayer commences a special proceeding for refund, the commissioner may assert and the surrogate's court may determine:

(A) a deficiency as to any amount of deficiency asserted within the period in which an assessment would be timely, or

(B) deny so much of the amount for which refund is sought in the

petition, as is offset by other issues pertaining to the taxpayer.

(3) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner under this subsection.

(4) Restriction on further notices of deficiency. If the taxpayer commences a special proceeding under this section, no notice of deficiency of estate tax may thereafter be issued to the taxpayer regarding the tax imposed by this article with respect to the death of the same decedent, except in case of fraud or with respect to a change or correction required to be reported under section nine hundred seventy-nine.

(g) Burden of proof. In any case before the surrogate's court under this section, the burden of proof shall be upon the petitioner, except for the following issues, as to which the burden of proof shall be upon the commissioner:

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

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

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a special proceeding commenced under this section, unless such increase in deficiency is the result of a change or correction required to be reported under section nine hundred seventy-nine, and of which change or correction the commissioner of taxation and finance had no notice at the time the commissioner mailed the notice of deficiency; and

(4) whether any person is liable for a penalty under subsection (k) or (r) of section six hundred eighty-five of this chapter, as made applicable to the tax imposed by this article by section nine hundred ninety.

(h) Review under this section exclusive. The review of a deficiency or denial of a refund provided by this section shall be the exclusive remedy available for the judicial review of the liability of the taxpayer for the taxes imposed by this article.

(i) Appeal; assessment pending appeal; appeal bond. (1) The taxpayer or the commissioner of taxation and finance may appeal from a decree

entered in a special proceeding pursuant to this section as provided in section two thousand seven hundred one of the surrogate's court procedure act.

(2) Irrespective of any restrictions on the assessment and collection of deficiencies, the commissioner may assess a deficiency determined by the surrogate's court after the expiration of the period during which a notice of appeal may be filed, notwithstanding that a notice of appeal has been filed by the taxpayer with respect to such deficiency, unless the taxpayer, at or before the time his notice of appeal is filed, has paid the deficiency, has deposited with the commissioner the amount of the deficiency, or has filed with the commissioner a bond or other security acceptable to the commissioner (which may be a jeopardy bond under subsection (h) of section six hundred ninety-four, as made applicable to the tax imposed by this article by section nine hundred ninety) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the appeal is made and all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, including costs of all appeals, conditioned upon the payment of the deficiency (including interest and other amounts) as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the commissioner is paid after the filing of the review bond or other security, such bond or other security shall, at the request of the taxpayer, be proportionately reduced.

(3) If the amount of a deficiency determined by the commissioner is disallowed in whole or in part by the court, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of a claim therefor, or, if payment has not been made, shall be abated.

(j) Date of finality of decree. A decree of the surrogate's court shall become final upon the expiration of the time for filing a notice of appeal if no such notice is filed within such time, or if a notice of appeal has been duly filed, upon expiration of the time for all judicial review, or upon the entry of a decree of the surrogate's court in accordance with the mandate of the court on appeal.

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

§ 999-a. Appendix to article twenty-six. The following provisions of the United States Internal Revenue Code of 1986, with all amendments enacted on or before January first, two thousand fourteen, shall apply to the tax imposed by this article, to the extent specified in this article.

§ 2031. Definition of Gross Estate.

(a) General.--The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) Valuation of unlisted stock and securities.--In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

(c) Estate tax with respect to land subject to a qualified conservation easement.--

(1) In general.--If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of--

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

(B) the exclusion limitation.

(2) Applicable percentage.--For purposes of paragraph (1), the term "applicable percentage" means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30

percent of the value of the land (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5)). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).

(3) Exclusion limitation.--For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

In the case of estates of decedents dying The exclusion limitation during:

	is:
1998.....	100,000
1999.....	200,000
2000.....	300,000
2001.....	400,000
2002 or thereafter.....	500,000

(4) Treatment of certain indebtedness.--

(A) In general.--The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) Definitions.--For purposes of this paragraph--

(i) Debt-financed property.--The term "debt-financed property" means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

(ii) Acquisition indebtedness.--The term "acquisition indebtedness" means, with respect to debt-financed property, the unpaid amount of--

(I) the indebtedness incurred by the donor in acquiring such property,

(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

(5) Treatment of retained development right.--

(A) In general.--Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified

conservation easement.

(B) Termination of retained development right.--If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) Additional tax.--Any failure to implement the agreement described in subparagraph (B) not later than the earlier of--

(i) the date which is 2 years after the date of the decedent's death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) Development right defined.--For purposes of this paragraph, the term "development right" means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

(6) Election.--The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

(7) Calculation of estate tax due.--An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall

be done in such manner and on such forms as the Secretary shall prescribe.

(8) Definitions.--For purposes of this subsection--

(A) Land subject to a qualified conservation easement.--The term "land subject to a qualified conservation easement" means land--

(i) which is located in the United States or any possession of the United States,

(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) Qualified conservation easement.--The term "qualified conservation easement" means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) Individual described.--An individual is described in this subparagraph if such individual is--

(i) the decedent,

(ii) a member of the decedent's family,

(iii) the executor of the decedent's estate, or

(iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

(D) Member of family.--The term "member of the decedent's family" means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) Treatment of easements granted after death.--In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) Application of this section to interests in partnerships, corporations, and trusts.--This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3).

(d) Cross reference.--

For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.

§ 2032. Alternate Valuation.

(a) General.--The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) Special rules.--No deduction under this chapter of any item shall be allowed if allowance for such items is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then--

(1) for purposes of the charitable deduction under section 2055 or 2106(a)(2), any bequest, legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date 6 months after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 6-month period, the date thereof).

(c) Election must decrease gross estate and estate tax.--No election may be made under this section with respect to an estate unless such election will decrease--

(1) the value of the gross estate, and

(2) the sum of the tax imposed by this chapter and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

(d) Election.--

(1) In general.--The election provided for in this section shall be made by the executor on the return of the tax imposed by this chapter. Such election, once made, shall be irrevocable.

(2) Exception.--No election may be made under this section if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return.

§ 2032A. Valuation of Certain Farm, Etc., Real Property.

(a) Value based on use under which property qualifies.--

(1) General rule.--If--

(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

(2) Limitation on aggregate reduction in fair market value.--The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application

of paragraph (1) with respect to any decedent shall not exceed \$750,000.

(3) Inflation adjustment.--In the case of estates of decedents dying in a calendar year after 1998, the \$750,000 amount contained in paragraph (2) shall be increased by an amount equal to--

(A) \$750,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000.

(b) Qualified real property.--

(1) In general.--For purposes of this section, the term "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if--

(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which--

(i) on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent.

(B) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which--

(i) such real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family, and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

(D) such real property is designated in the agreement referred to in

subsection (d)(2).

(2) Qualified use.--For purposes of this section, the term "qualified use" means the devotion of the property to any of the following:

(A) use as a farm for farming purposes, or

(B) use in a trade or business other than the trade or business of farming.

(3) Adjusted value.--For purposes of paragraph (1), the term "adjusted value" means--

(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

(B) in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053(a).

(4) Decedents who are retired or disabled.--

(A) In general.--If, on the date of the decedent's death, the requirements of paragraph (1)(C)(ii) with respect to the decedent for any property are not met, and the decedent--

(i) was receiving old-age benefits under title II of the Social Security Act for a continuous period ending on such date, or

(ii) was disabled for a continuous period ending on such date,

then paragraph (1)(C)(ii) shall be applied with respect to such property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in paragraph (1)(C).

(B) Disabled defined.--For purposes of subparagraph (A), an individual shall be disabled if such individual has a mental or physical impairment which renders him unable to materially participate in the operation of the farm or other business.

(C) Coordination with recapture.--For purposes of subsection (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with respect to any decedent by reason of subparagraph (A), the period ending on the date on which the continuous period taken into account under subparagraph (A) began shall be treated as the period immediately before

the decedent's death.

(5) Special rules for surviving spouses.--

(A) In general.--If property is qualified real property with respect to a decedent (hereinafter in this paragraph referred to as the "first decedent") and such property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this subsection and subsection (c) in the case of the estate of such surviving spouse, active management of the farm or other business by the surviving spouse shall be treated as material participation by such surviving spouse in the operation of such farm or business.

(B) Special rule.--For the purposes of subparagraph (A), the determination of whether property is qualified real property with respect to the first decedent shall be made without regard to subparagraph (D) of paragraph (1) and without regard to whether an election under this section was made.

(C) Coordination with paragraph (4).--In any case in which to do so will enable the requirements of paragraph (1)(C)(ii) to be met with respect to the surviving spouse, this subsection and subsection (c) shall be applied by taking into account any application of paragraph (4).

(c) Tax treatment of dispositions and failures to use for qualified use.--

(1) Imposition of additional estate tax.--If, within 10 years after the decedent's death and before the death of the qualified heir--

(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

(B) the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,

then, there is hereby imposed an additional estate tax.

(2) Amount of additional tax.--

(A) In general.--The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of--

(i) the adjusted tax difference attributable to such interest, or

(ii) the excess of the amount realized with respect to the interest

(or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

(B) Adjusted tax difference attributable to interest.--For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as--

(i) the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to

(ii) a similar excess determined for all qualified real property.

(C) Adjusted tax difference with respect to the estate.--For purposes of subparagraph (B), the term "adjusted tax difference with respect to the estate" means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term "estate tax liability" means the tax imposed by section 2001 reduced by the credits allowable against such tax.

(D) Partial dispositions.--For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion--

(i) the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

(ii) the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

(E) Special rule for disposition of timber.--In the case of qualified woodland to which an election under subsection (e)(13)(A) applies, if the qualified heir disposes of (or severs) any standing timber on such qualified woodland--

(i) such disposition (or severance) shall be treated as a disposition of a portion of the interest of the qualified heir in such property, and

(ii) the amount of the additional tax imposed by paragraph (1) with respect to such disposition shall be an amount equal to the lesser of--

(I) the amount realized on such disposition (or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed), or

(II) the amount of additional tax determined under this paragraph (without regard to this subparagraph) if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving such woodland to which this subparagraph applied.

For purposes of the preceding sentence, the disposition of a right to sever shall be treated as the disposition of the standing timber. The amount of additional tax imposed under paragraph (1) in any case in which a qualified heir disposes of his entire interest in the qualified woodland shall be reduced by any amount determined under this subparagraph with respect to such woodland.

(3) Only 1 additional tax imposed with respect to any 1 portion.--In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

(4) Due date.--The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or cessation referred to in paragraph (1).

(5) Liability for tax; furnishing of bond.--The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11).

(6) Cessation of qualified use.--For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if--

(A) such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subsection (b), or

(B) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir,

there had been periods aggregating more than 3 years during which--

(i) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business, and

(ii) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

(7) Special rules.--

(A) No tax if use begins within 2 years.--If the date on which the qualified heir begins to use the qualified real property (hereinafter in this subparagraph referred to as the commencement date) is before the date 2 years after the decedent's death--

(i) no tax shall be imposed under paragraph (1) by reason of the failure by the qualified heir to so use such property before the commencement date, and

(ii) the 10-year period under paragraph (1) shall be extended by the period after the decedent's death and before the commencement date.

(B) Active management by eligible qualified heir treated as material participation.--For purposes of paragraph (6)(B)(ii), the active management of a farm or other business by--

(i) an eligible qualified heir, or

(ii) a fiduciary of an eligible qualified heir described in clause (ii) or (iii) of subparagraph (C),

shall be treated as material participation by such eligible qualified heir in the operation of such farm or business. In the case of an eligible qualified heir described in clause (ii), (iii), or (iv) of subparagraph (C), the preceding sentence shall apply only during periods during which such heir meets the requirements of such clause.

(C) Eligible qualified heir.--For purposes of this paragraph, the term "eligible qualified heir" means a qualified heir who--

(i) is the surviving spouse of the decedent,

(ii) has not attained the age of 21,

(iii) is disabled (within the meaning of subsection (b)(4)(B)), or

(iv) is a student.

(D) Student.--For purposes of subparagraph (C), an individual shall be

treated as a student with respect to periods during any calendar year if (and only if) such individual is a student (within the meaning of section 152(f)(2)) for such calendar year.

(E) Certain rents treated as qualified use.--For purposes of this subsection, a surviving spouse or lineal descendant of the decedent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(8) Qualified conservation contribution is not a disposition.--A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).

(d) Election; agreement.--

(1) Election.--The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(2) Agreement.--The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

(3) Modification of election and agreement to be permitted.--The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but--

(A) the notice of election, as filed, does not contain all required information, or

(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90

days) after notification of such failures to provide such information or signatures.

(e) Definitions; special rules.--For purposes of this section--

(1) Qualified heir.--The term "qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(2) Member of family.--The term "member of the family" means, with respect to any individual, only--

(A) an ancestor of such individual,

(B) the spouse of such individual,

(C) a lineal descendant of such individual, of such individual's spouse, or of a parent of such individual, or

(D) the spouse of any lineal descendant described in subparagraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(3) Certain real property included.--In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(4) Farm.--The term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(5) Farming purposes.--The term "farming purposes" means--

(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B) handling, drying, packing, grading, or storing on a farm any

agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

- (C)(i) the planting, cultivating, caring for, or cutting of trees, or
- (ii) the preparation (other than milling) of trees for market.

(6) Material participation.--Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

(7) Method of valuing farms.--

(A) In general.--Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing--

(i) the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual State and local real estate taxes for such comparable land, by

(ii) the average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(B) Value based on net share rental in certain cases.--

(i) In general.--If there is no comparable land from which the average annual gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, subparagraph (A)(i) shall be applied by substituting "average annual net share rental" for "average annual gross cash rental".

(ii) Net share rental.--For purposes of this paragraph, the term "net share rental" means the excess of--

(I) the value of the produce received by the lessor of the land on which such produce is grown, over

(II) the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

(C) Exception.--The formula provided by subparagraph (A) shall not be used--

- (i) where it is established that there is no comparable land from

which the average annual gross cash rental may be determined, or

(ii) where the executor elects to have the value of the farm for farming purposes determined and that there is no comparable land from which the average net share rental may be determined under paragraph (8).

(8) Method of valuing closely held business interests, etc.--In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors,

(B) The capitalization of the fair rental value of the land for farmland or closely held business purposes,

(C) Assessed land values in a State which provides a differential or use value assessment law for farmland or closely held business,

(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price, and

(E) Any other factor which fairly values the farm or closely held business value of the property.

(9) Property acquired from decedent.--Property shall be considered to have been acquired from or to have passed from the decedent if--

(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

(B) such property is acquired by any person from the estate, or

(C) such property is acquired by any person from a trust (to the extent such property is includible in the gross estate of the decedent).

(10) Community property.--If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

(11) Bond in lieu of personal liability.--If the qualified heir makes written application to the Secretary for determination of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge.

(12) Active management.--The term "active management" means the making of the management decisions of a business (other than the daily operating decisions).

(13) Special rules for woodlands.--

(A) In general.--In the case of any qualified woodland with respect to which the executor elects to have this subparagraph apply, trees growing on such woodland shall not be treated as a crop.

(B) Qualified woodland.--The term "qualified woodland" means any real property which--

(i) is used in timber operations, and

(ii) is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(C) Timber operations.--The term "timber operations" means--

(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

(D) Election.--An election under subparagraph (A) shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(14) Treatment of replacement property acquired in section 1031 or 1033 transactions.--

(A) In general.--In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family shall be treated as a period during which there was such ownership, use, or material participation (as the case may be) with respect to the qualified replacement property.

(B) Limitation.--Subparagraph (A) shall not apply to the extent that the fair market value of the qualified replacement property (as of the date of its acquisition) exceeds the fair market value of the replaced property (as of the date of its disposition).

(C) Definitions.--For purposes of this paragraph--

(i) Qualified replacement property.--The term "qualified replacement property" means any real property which is--

(I) acquired in an exchange which qualifies under section 1031, or

(II) the acquisition of which results in the nonrecognition of gain under section 1033.

Such term shall only include property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) Replaced property.--The term "replaced property" means--

(I) the property transferred in the exchange which qualifies under section 1031, or

(II) the property compulsorily or involuntarily converted (within the meaning of section 1033).

(f) Statute of limitations.--If qualified real property is disposed of or ceases to be used for a qualified use, then--

(1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion or exchange to which subsection (h) or (i) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace or of the exchange of property), and

(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of this section and section 6324B to interests in partnerships, corporations, and trusts.--The Secretary shall prescribe regulations setting forth the application of this section and section 6324B in the case of an interest in a partnership, corporation, or trust

which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

(h) Special rules for involuntary conversions of qualified real property.--

(1) Treatment of converted property.--

(A) In general.--If there is an involuntary conversion of an interest in qualified real property--

(i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or

(ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

(B) Amount of tax where there is not complete reinvestment.--The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which--

(i) bears the same ratio to such tax, as

(ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

(2) Treatment of replacement property.--For purposes of subsection (c)--

(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted; except that with respect to such qualified replacement property the 10-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property,

(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied--

(i) by not taking into account periods after the involuntary

conversion and before the acquisition of the qualified replacement property, and

(ii) by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(3) Definitions and special rules.--For purposes of this subsection--

(A) Involuntary conversion.--The term "involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033.

(B) Qualified replacement property.--The term "qualified replacement property" means--

(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

(4) Certain rules made applicable.--The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

(i) Exchanges of qualified real property.--

(1) Treatment of property exchanged.--

(A) Exchanges solely for qualified exchange property.--If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

(B) Exchanges where other property received.--If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which--

- (i) bears the same ratio to such tax, as
- (ii) the fair market value of the qualified exchange property bears to the fair market value of the qualified real property exchanged.

For purposes of clause (ii) of the preceding sentence, fair market value shall be determined as of the time of the exchange.

(2) Treatment of qualified exchange property.--For purposes of subsection (c)--

(A) any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was exchanged,

(B) any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

(3) Qualified exchange property.--For purposes of this subsection, the term "qualified exchange property" means real property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a).

§ 2033. Property in Which the Decedent had an Interest. The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

§ 2034. Dower or Curtesy Interests. The value of the gross estate shall include the value of all property to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy.

§ 2035. Adjustments for Certain Gifts Made Within Three Years of Decedent's Death. (a) Inclusion of certain property in gross estate.--If--

(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

(2) the value of such property (or an interest therein) would have

been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

(b) Inclusion of gift tax on gifts made during 3 years before decedent's death.--The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

(c) Other rules relating to transfers within 3 years of death.--

(1) In general.--For purposes of--

(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

(2) Coordination with section 6166.--An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of subsection (a).

(3) Marital and small transfers.--Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

(d) Exception.--Subsection (a) and paragraph (1) of subsection (c) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

(e) Treatment of certain transfers from revocable trusts.--For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent.

§ 2036. Transfers with Retained Life Estate. (a) General rule.--The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death--

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) Voting rights.--

(1) In general.--For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

(2) Controlled corporation.--For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

(3) Coordination with section 2035.--For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent.

(c) Limitation on application of general rule.--This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made

after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

§ 2037. Transfers Taking Effect at Death. (a) General rule.--The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if--

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

(b) Special rules.--For purposes of this section, the term "reversionary interest" includes a possibility that property transferred by the decedent--

(1) may return to him or his estate, or

(2) may be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, under regulations prescribed by the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary

during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death.

§ 2038. Revocable Transfers. (a) In general.--The value of the gross estate shall include the value of all property--

(1) Transfers after June 22, 1936.--To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

(2) Transfers on or before June 22, 1936.--To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph.

(b) Date of existence of power.--For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation, or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such

purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

§ 2039. Annuities. (a) General.--The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(b) Amount includible.--Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

§ 2040. Joint Interests. (a) General rule.--The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: Provided, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted

only such part of the value of such property as is proportionate to the consideration furnished by such other person: Provided further, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

(b) Certain joint interests of husband and wife.--

(1) Interests of spouse excluded from gross estate.--Notwithstanding subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest.

(2) Qualified joint interest defined.--For purposes of paragraph (1), the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as--

(A) tenants by the entirety, or

(B) joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

§ 2041. Powers of Appointment. (a) In general.--The value of the gross estate shall include the value of all property--

(1) Powers of appointment created on or before October 21, 1942.--To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent--

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the

exercise of such power shall not be deemed to be the exercise of a general power of appointment if--

(i) such partial release occurred before November 1, 1951, or

(ii) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

(2) Powers created after October 21, 1942.--To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) Creation of another power in certain cases.--To the extent of any property with respect to which the decedent--

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) Definitions.--For purposes of subsection (a)--

(1) General power of appointment.--The term "general power of appointment" means a power which is exercisable in favor of the

decedent, his estate, his creditors, or the creditors of his estate; except that--

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person--

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power--such power shall not be deemed a general power of appointment.

(ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent--such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person--such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(2) Lapse of power.--The lapse of a power of appointment created after

October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) \$5,000, or

(B) 5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

(3) Date of creation of power.--For purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

§ 2042. Proceeds of Life Insurance. The value of the gross estate shall include the value of all property--

(1) Receivable by the executor.--To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

(2) Receivable by other beneficiaries.--To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary. In determining the

value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.

§ 2043. Transfers for Insufficient Consideration. (a) In general.--If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

(b) Marital rights not treated as consideration.--

(1) In general.--For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

(2) Exception.--For purposes of section 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of section 2516 (relating to certain property settlements) shall be considered to be made for an adequate and full consideration in money or money's worth.

§ 2044. Certain Property for Which Marital Deduction Was Previously Allowed. (a) General rule.--The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

(b) Property to which this section applies.--This section applies to any property if--

(1) a deduction was allowed with respect to the transfer of such property to the decedent--

(A) under section 2056 by reason of subsection (b)(7) thereof, or

(B) under section 2523 by reason of subsection (f) thereof, and

(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or

all of such property.

(c) Property treated as having passed from decedent.--For purposes of this chapter and chapter 13, property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent.

§ 2045. Prior Interests. Except as otherwise specifically provided by law, sections 2034 to 2042, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised, or relinquished.

§ 2046. Disclaimers. For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.

§ 2053. Expenses, indebtedness, and taxes. (a) General rule.--For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts--

- (1) for funeral expenses,
- (2) for administration expenses,
- (3) for claims against the estate, and
- (4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

(b) Other administration expenses.--Subject to the limitations in paragraph (1) of subsection (c), there shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a) if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 6501.

(c) Limitations.--

(1) Limitations applicable to subsections (a) and (b).--

(A) Consideration for claims.--The deduction allowed by this section

in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

(B) Certain taxes.--Any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

(C) Certain claims by remaindermen.--No deduction shall be allowed under this section for a claim against the estate by a remainderman relating to any property described in section 2044.

(D) Section 6166 interest.--No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

(2) Limitations applicable only to subsection (a).--In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 2054 attributable to such property.

(d) Certain foreign death taxes.--

(1) In general.--Notwithstanding the provisions of subsection (c)(1)(B), for purposes of the tax imposed by section 2001, the value of

the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary) of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055. The determination under this paragraph of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States. Any election under this paragraph shall be exercised in accordance with regulations prescribed by the Secretary.

(2) Condition for allowance of deduction.--No deduction shall be allowed under paragraph (1) for a foreign death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

(3) Effect on credit for foreign death taxes of deduction under this subsection.--

(A) Election.--An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.

(B) Cross reference.--

See section 2011(d) for the effect of a deduction taken under this paragraph on the credit for foreign death taxes.

(e) Marital rights.--

For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2).

§ 2054. Losses. For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise.

§ 2055. Transfers for public, charitable, and religious uses.

(a) In general.--For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers--

(1) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for

religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(4) to or for the use of any veterans' organization incorporated by Act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(5) to an employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities within the meaning of section 664(g).

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be a qualified disclaimer with the same full force and effect as though he had filed such qualified disclaimer. Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) Powers of appointment.--Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

(c) Death taxes payable out of bequests.--If the tax imposed by section 2001, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of

such taxes.

(d) Limitation on deduction.--The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(e) Disallowance of deductions in certain cases.--

(1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless--

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Reformation to comply with paragraph (2).--

(A) In general.--A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

(B) Qualified reformation.--For purposes of this paragraph, the term "qualified reformation" means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if--

(i) any difference between--

(I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and

(II) the actuarial value (as so determined) of the reformable interest,

does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

(ii) in the case of--

(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or

(II) any other interest, the reformable interest and the qualified interest are for the same period, and

(iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for a term of 20 years.

(C) Reformable interest.--For purposes of this paragraph--

(i) In general.--The term "reformable interest" means any interest for which a deduction would be allowable under subsection (a) at the time of the decedent's death but for paragraph (2).

(ii) Beneficiary's interest must be fixed.--The term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.

(iii) Special rule where timely commencement of reformation.--Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after--

(I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or

(II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which such a return is required to be filed by the trust.

(iv) Special rule for will executed before January 1, 1979, etc.--In

the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.

(D) Qualified interest.--For purposes of this paragraph, the term "qualified interest" means an interest for which a deduction is allowable under subsection (a).

(E) Limitation.--The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).

(F) Special rule where income beneficiary dies.--If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term "wholly charitable trust" means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

(G) Statute of limitations.--The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation (or other proceeding pursuant to subparagraph (J)1 has occurred.

(H) Regulations.--The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.

(I) Reformations permitted in case of remainder interests in residence or farm, pooled income funds, etc.--The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure--

(i) to meet the requirements of section 170(f)(3)(B) (relating to

remainder interests in personal residence or farm, etc.), or

(ii) to meet the requirements of section 642(c)(5).

(J) Void or reformed trust in cases of insufficient remainder interests.--In the case of a trust that would qualify (or could be reformed to qualify pursuant to subparagraph (B)) but for failure to satisfy the requirement of paragraph (1)(D) or (2)(D) of section 664(d), such trust may be--

(i) declared null and void ab initio, or

(ii) changed by reformation, amendment, or otherwise to meet such requirement by reducing the payout rate or the duration (or both) of any noncharitable beneficiary's interest to the extent necessary to satisfy such requirement,

pursuant to a proceeding that is commenced within the period required in subparagraph (C)(iii). In a case described in clause (i), no deduction shall be allowed under this title for any transfer to the trust and any transactions entered into by the trust prior to being declared void shall be treated as entered into by the transferor.

(4) Works of art and their copyrights treated as separate properties in certain cases.--

(A) In general.--In the case of a qualified contribution of a work of art, the work of art and the copyright on such work of art shall be treated as separate properties for purposes of paragraph (2).

(B) Work of art defined.--For purposes of this paragraph, the term "work of art" means any tangible personal property with respect to which there is a copyright under Federal law.

(C) Qualified contribution defined.--For purposes of this paragraph, the term "qualified contribution" means any transfer of property to a qualified organization if the use of the property by the organization is related to the purpose or function constituting the basis for its exemption under section 501.

(D) Qualified organization defined.--For purposes of this paragraph, the term "qualified organization" means any organization described in section 501(c)(3) other than a private foundation (as defined in section 509). For purposes of the preceding sentence, a private operating foundation (as defined in section 4942(j)(3)) shall not be treated as a private foundation.

(5) Contributions to donor advised funds.--A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if--

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not--

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(f) Special rule for irrevocable transfers of easements in real property.--A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(g) Cross references.--

(1) For option as to time for valuation for purpose of deduction under this section, see section 2032.

(2) For treatment of certain organizations providing child care, see section 501(k).

(3) For exemption of gifts and bequests to or for the benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (2 U.S.C. 161).

(4) For treatment of gifts and bequests for the benefit of the Naval Historical Center as gifts or bequests to or for the use of the United States, see section 7222 of Title 10, United States Code.

(5) For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191).

(6) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development

Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(7) For treatment of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons" as gifts or bequests to or for the use of the United States, see section 4043 of Title 18, United States Code.

(8) For payment of tax on gifts and bequests of United States obligations to the United States, see section 3113(e) of Title 31, United States Code.

(9) For treatment of gifts and bequests for benefit of the Naval Academy as gifts or bequests to or for the use of the United States, see section 6973 of Title 10, United States Code.

(10) For treatment of gifts and bequests for benefit of the Naval Academy Museum as gifts or bequests to or for the use of the United States, see section 6974 of Title 10, United States Code.

(11) For exemption of gifts and bequests received by National Archives Trust Fund Board, see section 2308 of Title 44, United States Code.

(12) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

§ 2056. Bequests, etc., to surviving spouse. (a) Allowance of marital deduction.--For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) Limitation in the case of life estate or other terminable interest.--

(1) General rule.--Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest--

(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from

the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))--

(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(2) Interest in unidentified assets.--Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(3) Interest of spouse conditional on survival for limited period.--For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if--

(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(B) such termination or failure does not in fact occur.

(4) Valuation of interest passing to surviving spouse.--In determining for purposes of subsection (a) the value of any interest in property

passing to the surviving spouse for which a deduction is allowed by this section--

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(5) Life estate with power of appointment in surviving spouse.--In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse--

(A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of the interest so passing shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(6) Life insurance or annuity payments with power of appointment in surviving spouse.--In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an

agreement to pay interest thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse--

(A) such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of such amounts shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(7) Election with respect to life estate for surviving spouse.--

(A) In general.--In the case of qualified terminable interest property--

(i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and

(ii) for purposes of paragraph (1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

(B) Qualified terminable interest property defined.--For purposes of this paragraph--

(i) In general.--The term "qualified terminable interest property" means property--

(I) which passes from the decedent,

(II) in which the surviving spouse has a qualifying income interest for life, and

(III) to which an election under this paragraph applies.

(ii) Qualifying income interest for life.--The surviving spouse has a qualifying income interest for life if--

(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

(iii) Property includes interest therein.--The term "property" includes an interest in property.

(iv) Specific portion treated as separate property.--A specific portion of property shall be treated as separate property.

(v) Election.--An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

(C) Treatment of survivor annuities.--In the case of an annuity included in the gross estate of the decedent under section 2039 (or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033) where only the surviving spouse has the right to receive payments before the death of such surviving spouse--

(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable.

(8) Special rule for charitable remainder trusts.--

(A) In general.--If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust who is not a charitable beneficiary nor an ESOP beneficiary, paragraph (1) shall not

apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

(B) Definitions.--For purposes of subparagraph (A)--

(i) Charitable beneficiary.--The term "charitable beneficiary" means any beneficiary which is an organization described in section 170(c).

(ii) ESOP beneficiary.--The term "ESOP beneficiary" means any beneficiary which is an employee stock ownership plan (as defined in section 4975(e)(7)) that holds a remainder interest in qualified employer securities (as defined in section 664(g)(4)) to be transferred to such plan in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(iii) Qualified charitable remainder trust.--The term "qualified charitable remainder trust" means a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664).

(9) Denial of double deduction.--Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same decedent.

(10) Specific portion.--For purposes of paragraphs (5), (6), and (7)(B)(iv), the term "specific portion" only includes a portion determined on a fractional or percentage basis.

(c) Definition.--For purposes of this section, an interest in property shall be considered as passing from the decedent to any person if and only if--

(1) such interest is bequeathed or devised to such person by the decedent;

(2) such interest is inherited by such person from the decedent;

(3) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent;

(4) such interest has been transferred to such person by the decedent at any time;

(5) such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship;

(6) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed

such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or

(7) such interest consists of proceeds of insurance on the life of the decedent receivable by such person.

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b)(1), be considered as passing from the decedent to a person other than the surviving spouse.

§ 2103. Definition of Gross Estate. For the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate (determined as provided in section 2031) which at the time of his death is situated in the United States.

§ 2104. Property Within the United States. (a) Stock in corporation.--For purposes of this subchapter shares of stock owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States only if issued by a domestic corporation.

(b) Revocable transfers and transfers within 3 years of death.--For purposes of this subchapter, any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or at the time of the decedent's death.

(c) Debt obligations.--For purposes of this subchapter, debt obligations of-

(1) a United States person, or

(2) the United States, a State or any political subdivision thereof, or the District of Columbia,

owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States. With respect to estates of decedents dying after December 31, 1969, deposits with a domestic branch of a foreign corporation, if such branch is engaged in

the commercial banking business, shall, for purposes of this subchapter, be deemed property within the United States. This subsection shall not apply to a debt obligation to which section 2105(b) applies.

§ 2105. Property Without the United States. (a) Proceeds of life insurance.--For purposes of this subchapter, the amount receivable as insurance on the life of a nonresident not a citizen of the United States shall not be deemed property within the United States.

(b) Bank deposits and certain other debt obligations.--For purposes of this subchapter, the following shall not be deemed property within the United States--

(1) amounts described in section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1) were such interest received by the decedent at the time of his death,

(2) deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business,

(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(5) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death, and

(4) obligations which would be original issue discount obligations as defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any interest thereon (were such interest received by the decedent at the time of his death) would not be effectively connected with the conduct of a trade or business within the United States.

Notwithstanding the preceding sentence, if any portion of the interest on an obligation referred to in paragraph (3) would not be eligible for the exemption referred to in paragraph (3) by reason of section 871(h)(4) if the interest were received by the decedent at the time of his death, then an appropriate portion (as determined in a manner prescribed by the Secretary) of the value (as determined for purposes of this chapter) of such debt obligation shall be deemed property within the United States.

(c) Works of art on loan for exhibition.--For purposes of this subchapter, works of art owned by a nonresident not a citizen of the

United States shall not be deemed property within the United States if such works of art are--

(1) imported into the United States solely for exhibition purposes,
(2) loaned for such purposes, to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and

(3) at the time of the death of the owner, on exhibition, or enroute to or from exhibition, in such a public gallery or museum.

§ 2503. (a) General Definition - The term "taxable gifts" means the total amount of gifts made during the calendar year, less deductions provided in subchapter C (section 2522 and following).

(b) Exclusions from gifts. (1) In general.--In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

(2) Inflation adjustment.--In the case of gifts made in a calendar year after 1998, the \$10,000 amount contained in paragraph (1) shall be increased by an amount equal to--

(A) \$10,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$1,000.

(c) Transfer for the benefit of minor. -- No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom-

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended-

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

{(d) Repealed. Pub. L. 97-34, title III, § 311(h)(5), Aug. 13, 1981, 95 Stat. 282}

(e) Exclusion for certain transfers for educational expenses or medical expenses. (1) In general. Any qualified transfer shall not be treated as a transfer of property by gift for purposes of this chapter.

(2) Qualified transfer. For purposes of this subsection, the term "qualified transfer" means any amount paid on behalf of an individual-

(A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual, or

(B) to any person who provides medical care (as defined in section 213(d)) with respect to such individual as payment for such medical care.

(f) Waiver of certain pension rights. If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter.

(g) Treatment of certain loans of artworks. (1) In general. For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if-

(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

(2) Definitions. For purposes of this section-

(A) Qualified work of art. The term "qualified work of art" means any archaeological, historic, or creative tangible personal property.

(B) Private foundation. The term "private foundation" has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).

§ 2511. Transfers in general. (a) Scope. Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

(b) Intangible property. For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501(a)(2)-

(1) shares of stock issued by a domestic corporation, and

(2) debt obligations of-

--(A) a United States person, or

--(B) the United States, a State or any political subdivision thereof, or the District of Columbia,

--which are owned and held by such nonresident shall be deemed to be property situated within the United States.

§ 2512. Valuation of gifts. (a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(b) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

§ 2513. Gift by husband or wife to third party. (a) Considered as made one-half by each. (1) In general. A gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This paragraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a general power of appointment, as defined in section 2514(c), over such interest. For purposes of this section, an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

(2) Consent of both spouses. Paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

(b) Manner and time of signifying consent. (1) Manner. A consent under this section shall be signified in such manner as is provided under regulations prescribed by the Secretary.

(2) Time. Such consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitations-

--(A) The consent may not be signified after the 15th day of April following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse.

--(B) The consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 6212(a).

(c) Revocation of consent. Revocation of a consent previously signified shall be made in such manner as is provided under regulations prescribed by the Secretary, but the right to revoke a consent previously signified with respect to a calendar year-

(1) shall not exist after the 15th day of April following the close of such year if the consent was signified on or before such 15th day; and

(2) shall not exist if the consent was not signified until after such 15th day.

(d) Joint and several liability for tax. If the consent required by subsection (a)(2) is signified with respect to a gift made in any calendar year, the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several.

§ 2514. Powers of appointment. (a) Powers created on or before October 21, 1942. An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before

October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if-

(1) such partial release occurred before November 1, 1951, or

(2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(b) Powers created after October 21, 1942. The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

(c) Definition of general power of appointment. For purposes of this section, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the "possessor"), his estate, his creditors, or the creditors of his estate; except that-

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person-

--(A) if the power is not exercisable by the possessor except in conjunction with the creator of the power-such power shall not be deemed a general power of appointment;

--(B) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor-such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in

the property and such interest shall be deemed adverse to such exercise of the possessor's power;

--(C) if (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person-such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

--For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(d) Creation of another power in certain cases. If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(e) Lapse of power. The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(1) \$5,000, or

(2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(f) Date of creation of power. For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished

such will, by codicil or otherwise, after October 21, 1942.

§ 2516. Certain property settlements. Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement-

(1) to either spouse in settlement of his or her marital or property rights, or

(2) to provide a reasonable allowance for the support of issue of the marriage during minority,

--shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

§ 2518. Disclaimers. (a) General Rule. - For purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

(b) Qualified Disclaimer Defined. - For purposes of subsection (a), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property but only if -

(1) such refusal is in writing,

(2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of -

(A) the date on which the transfer creating the interest in such person is made, or

(B) the day on which such person attains age 21,

(3) such person has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either -

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

(c) Other rules. For purposes of subsection (a)-

(1) Disclaimer of undivided portion of interest. A disclaimer with

respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

(2) Powers. A power with respect to property shall be treated as an interest in such property.

(3) Certain transfers treated as disclaimers. A written transfer of the transferor's entire interest in the property-

(A) which meets requirements similar to the requirements of paragraphs (2) and (3) of subsection (b), and

(B) which is to a person or persons who would have received the property had the transferor made a qualified disclaimer (within the meaning of subsection (b)),

--shall be treated as a qualified disclaimer.

§ 2519. Dispositions of certain life estates. (a) General rule

--For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

(b) Property to which this subsection applies. This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor-

(1) under section 2056 by reason of subsection (b)(7) thereof, or

(2) under section 2523 by reason of subsection (f) thereof.

(c) Cross reference

--For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).

§ 2522. Charitable and similar gifts. (a) Citizens or residents. In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of-

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment),

including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) Nonresidents. In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of-

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and

operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(c) Disallowance of deductions in certain cases. (1) No deduction shall be allowed under this section for a gift to of 1 for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless-

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of

a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

(4) Reformation to comply with paragraph (2). (A) In general -- A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply -- For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(5) Contributions to donor advised funds. A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if--(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not--(i) described in paragraph (3) or (4) of subsection (a), or--(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and--(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(d) Special rule for irrevocable transfers of easements in real property. A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(e) Special rules for fractional gifts

(1) Denial of deduction in certain cases

(A) In general

--No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by-

--(i) the taxpayer, or

--(ii) the taxpayer and the donee.

(B) Exceptions

--The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Recapture of deduction in certain cases; addition to tax

(A) In general. The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property-

--(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of-

--(I) the date that is 10 years after the date of the initial fractional contribution, or

--(II) the date of the death of the donor, and

--(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)-

--(I) had substantial physical possession of the property, and

--(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax. The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(C) Initial fractional contribution. For purposes of this paragraph, the term "initial fractional contribution" means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

(f) Cross references

--(1) For treatment of certain organizations providing child care, see section 501(k).

--(2) For exemption of certain gifts to or for the benefit of the United

States and for rules of construction with respect to certain bequests, see section 2055(f).

--(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

§ 2523. Gift to spouse (a) Allowance of deduction. Where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

(b) Life estate or other terminable interest. Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest-

(1) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(2) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For purposes of this paragraph, the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for purposes of paragraph (1), be considered as a transfer by him. Except as provided in

subsection (e), where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

(c) Interest in unidentified assets. Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(d) Joint interests. If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for purposes of subsection (b) as an interest retained by the donor in himself.

(e) Life estate with power of appointment in donee spouse. Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of such interest, or such portion, to any person other than the donee spouse-

(1) the interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) no part of the interest, or such portion, so transferred shall, for purposes of subsection (b)(1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in

the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events. For purposes of this subsection, the term "specific portion" only includes a portion determined on a fractional or percentage basis.

(f) Election with respect to life estate for donee spouse. (1) In general

In the case of qualified terminable interest property-

(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

(B) for purposes of subsection (b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

(2) Qualified terminable interest property. For purposes of this subsection, the term "qualified terminable interest property" means any property-

(A) which is transferred by the donor spouse,

(B) in which the donee spouse has a qualifying income interest for life, and

(C) to which an election under this subsection applies.

(3) Certain rules made applicable. For purposes of this subsection, rules similar to the rules of clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply and the rules of section 2056(b)(10) shall apply.

(4) Election. (A) Time and manner. An election under this subsection with respect to any property shall be made on or before the date prescribed by section 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to section 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe.

(B) Election irrevocable. An election under this subsection, once made, shall be irrevocable.

(5) Treatment of interest retained by donor spouse. (A) In general. In the case of any qualified terminable interest property-

(i) such property shall not be includible in the gross estate of the donor spouse, and

(ii) any subsequent transfer by the donor spouse of an interest in

such property shall not be treated as a transfer for purposes of this chapter.

(B) Subparagraph (A) not to apply after transfer by donee spouse. Subparagraph (A) shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or such property is includible in the donee spouse's gross estate under section 2044.

(6) Treatment of joint and survivor annuities. In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die-

--(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

--(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

--(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

--(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable.

(g) Special rule for charitable remainder trusts. (1) In general. If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the donor) of a qualified charitable remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

(2) Definitions. For purposes of paragraph (1), the term "noncharitable beneficiary" and "qualified charitable remainder trust" have the meanings given to such terms by section 2056(b)(8)(B).

(h) Denial of double deduction. Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same donor.

§ 2524. Extent of deductions. The deductions provided in sections 2522 and 2523 shall be allowed only to the extent that the gifts therein

specified are included in the amount of gifts against which such deductions are applied.

§ 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships. (a) Valuation rules. (1) In general. Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right-

--(A) which is described in subparagraph (A) or (B) of subsection (b)(1), and

--(B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

--shall be determined under paragraph (3). This paragraph shall not apply to the transfer of any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

(2) Exceptions for marketable retained interests, etc. Paragraph (1) shall not apply to any right with respect to an applicable retained interest if-

--(A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,

--(B) such interest is of the same class as the transferred interest, or

--(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

--Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a nonlapsing difference for purposes of such subparagraph.

(3) Valuation of rights to which paragraph (1) applies. (A) In general. The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

(B) Valuation of certain qualified payments. If-

- (i) any applicable retained interest confers a distribution right which consists of the right to a qualified payment, and
- (ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest, the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

(C) Valuation of qualified payments where no liquidation, etc. rights. In the case of an applicable retained interest which is described in subparagraph (B)(i) but not subparagraph (B)(ii), the value of the distribution right shall be determined without regard to this section.

(4) Minimum valuation of junior equity. (A) In general. In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of-

- (i) the total value of all of the equity interests in such entity, plus
- (ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

(B) Definitions. For purposes of this paragraph-

(i) Junior equity interest. The term "junior equity interest" means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital (or, to the extent provided in regulations, the rights as to either income or capital) are junior to the rights of all other classes of equity interests.

(ii) Equity interest. The term "equity interest" means stock or any interest as a partner, as the case may be.

(b) Applicable retained interests. For purposes of this section-

(1) In general. The term "applicable retained interest" means any interest in an entity with respect to which there is-

- (A) a distribution right, but only if, immediately before the transfer described in subsection (a)(1), the transferor and applicable family members hold (after application of subsection (e)(3)) control of the entity, or

--(B) a liquidation, put, call, or conversion right.

(2) Control. For purposes of paragraph (1)-

(A) Corporations. In the case of a corporation, the term "control" means the holding of at least 50 percent (by vote or value) of the stock of the corporation.

(B) Partnerships. In the case of a partnership, the term "control" means-

--(i) the holding of at least 50 percent of the capital or profits interests in the partnership, or

--(ii) in the case of a limited partnership, the holding of any interest as a general partner.

(C) Applicable family member. For purposes of this subsection, the term "applicable family member" includes any lineal descendant of any parent of the transferor or the transferor's spouse.

(c) Distribution and other rights; qualified payments. For purposes of this section-

(1) Distribution right. (A) In general. The term "distribution right" means-

--(i) a right to distributions from a corporation with respect to its stock, and

--(ii) a right to distributions from a partnership with respect to a partner's interest in the partnership.

(B) Exceptions. The term "distribution right" does not include-

--(i) a right to distributions with respect to any interest which is junior to the rights of the transferred interest,

--(ii) any liquidation, put, call, or conversion right, or

--(iii) any right to receive any guaranteed payment described in section 707(c) of a fixed amount.

(2) Liquidation, etc. rights. (A) In general. The term "liquidation, put, call, or conversion right" means any liquidation, put, call, or conversion right, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest.

(B) Exception for fixed rights. (i) In general. The term "liquidation, put, call, or conversion right" does not include any right which must be exercised at a specific time and at a specific amount.

(ii) Treatment of certain rights. If a right is assumed to be exercised in a particular manner under subsection (a)(3)(B), such right

shall be treated as so exercised for purposes of clause (i).

(C) Exception for certain rights to convert. The term "liquidation, put, call, or conversion right" does not include any right which--(i) is a right to convert into a fixed number (or a fixed percentage) of shares of the same class of stock in a corporation as the transferred stock in such corporation under subsection (a)(1) (or stock which would be of the same class but for nonlapsing differences in voting power),--(ii) is nonlapsing,--(iii) is subject to proportionate adjustments for splits, combinations, reclassifications, and similar changes in the capital stock, and--(iv) is subject to adjustments similar to the adjustments under subsection (d) for accumulated but unpaid distributions.--A rule similar to the rule of the preceding sentence shall apply for partnerships.

(3) Qualified payment. (A) In general. Except as otherwise provided in this paragraph, the term "qualified payment" means any dividend payable on a periodic basis under any cumulative preferred stock (or a comparable payment under any partnership interest) to the extent that such dividend (or comparable payment) is determined at a fixed rate.

(B) Treatment of variable rate payments. For purposes of subparagraph (A), a payment shall be treated as fixed as to rate if such payment is determined at a rate which bears a fixed relationship to a specified market interest rate.

(C) Elections. (i) In general. Payments under any interest held by a transferor which (without regard to this subparagraph) are qualified payments shall be treated as qualified payments unless the transferor elects not to treat such payments as qualified payments. Payments described in the preceding sentence which are held by an applicable family member shall be treated as qualified payments only if such member elects to treat such payments as qualified payments.

(ii) Election to have interest treated as qualified payment. A transferor or applicable family member holding any distribution right which (without regard to this subparagraph) is not a qualified payment may elect to treat such right as a qualified payment, to be paid in the amounts and at the times specified in such election. The preceding sentence shall apply only to the extent that the amounts and times so

specified are not inconsistent with the underlying legal instrument giving rise to such right.

(iii) Elections irrevocable. Any election under this subparagraph with respect to an interest shall, once made, be irrevocable.

(d) Transfer tax treatment of cumulative but unpaid distributions. (1) In general. If a taxable event occurs with respect to any distribution right to which subsection (a)(3)(B) or (C) applied, the following shall be increased by the amount determined under paragraph (2):

--(A) The taxable estate of the transferor in the case of a taxable event described in paragraph (3)(A)(i).

--(B) The taxable gifts of the transferor for the calendar year in which the taxable event occurs in the case of a taxable event described in paragraph (3)(A)(ii) or (iii).

(2) Amount of increase. (A) In general. The amount of the increase determined under this paragraph shall be the excess (if any) of-

--(i) the value of the qualified payments payable during the period beginning on the date of the transfer under subsection (a)(1) and ending on the date of the taxable event determined as if-

--(I) all such payments were paid on the date payment was due, and

--(II) all such payments were reinvested by the transferor as of the date of payment at a yield equal to the discount rate used in determining the value of the applicable retained interest described in subsection (a)(1), over

(ii) the value of such payments paid during such period computed under clause (i) on the basis of the time when such payments were actually paid.

(B) Limitation on amount of increase. (i) In general. The amount of the increase under subparagraph (A) shall not exceed the applicable percentage of the excess (if any) of-

--(I) the value (determined as of the date of the taxable event) of all equity interests in the entity which are junior to the applicable retained interest, over

--(II) the value of such interests (determined as of the date of the transfer to which subsection (a)(1) applied).

(ii) Applicable percentage. For purposes of clause (i), the applicable percentage is the percentage determined by dividing-

--(I) the number of shares in the corporation held (as of the date of

the taxable event) by the transferor which are applicable retained interests of the same class, by

--(II) the total number of shares in such corporation (as of such date) which are of the same class as the class described in subclause (I).

--A similar percentage shall be determined in the case of interests in a partnership.

(iii) Definition. For purposes of this subparagraph, the term "equity interest" has the meaning given such term by subsection (a)(4)(B).

(C) Grace period. For purposes of subparagraph (A), any payment of any distribution during the 4-year period beginning on its due date shall be treated as having been made on such due date.

(3) Taxable events. For purposes of this subsection-

(A) In general. The term "taxable event" means any of the following:

--(i) The death of the transferor if the applicable retained interest conferring the distribution right is includible in the estate of the transferor.

--(ii) The transfer of such applicable retained interest.

--(iii) At the election of the taxpayer, the payment of any qualified payment after the period described in paragraph (2)(C), but only with respect to such payment.

(B) Exception where spouse is transferee. (i) Deathtime transfers

--Subparagraph (A)(i) shall not apply to any interest includible in the gross estate of the transferor if a deduction with respect to such interest is allowable under section 2056 or 2106(a)(3).

(ii) Lifetime transfers. A transfer to the spouse of the transferor shall not be treated as a taxable event under subparagraph (A)(ii) if such transfer does not result in a taxable gift by reason of-

--(I) any deduction allowed under section 2523, or the exclusion under section 2503(b), or

--(II) consideration for the transfer provided by the spouse.

(iii) Spouse succeeds to treatment of transferor. If an event is not treated as a taxable event by reason of this subparagraph, the transferee spouse or surviving spouse (as the case may be) shall be treated in the same manner as the transferor in applying this subsection with respect to the interest involved.

(4) Special rules for applicable family members. (A) Family member treated in same manner as transferor. For purposes of this subsection,

an applicable family member shall be treated in the same manner as the transferor with respect to any distribution right retained by such family member to which subsection (a)(3)(B) or (C) applied.

(B) Transfer to applicable family member. In the case of a taxable event described in paragraph (3)(A)(ii) involving the transfer of an applicable retained interest to an applicable family member (other than the spouse of the transferor), the applicable family member shall be treated in the same manner as the transferor in applying this subsection to distributions accumulating with respect to such interest after such taxable event.

(C) Transfer to transferors. In the case of a taxable event described in paragraph (3)(A)(ii) involving a transfer of an applicable retained interest from an applicable family member to a transferor, this subsection shall continue to apply to the transferor during any period the transferor holds such interest.

(5) Transfer to include termination. For purposes of this subsection, any termination of an interest shall be treated as a transfer.

(e) Other definitions and rules. For purposes of this section-

(1) Member of the family. The term "member of the family" means, with respect to any transferor-

--(A) the transferor's spouse,

--(B) a lineal descendant of the transferor or the transferor's spouse, and

--(C) the spouse of any such descendant.

(2) Applicable family member. The term "applicable family member" means, with respect to any transferor-

--(A) the transferor's spouse,

--(B) an ancestor of the transferor or the transferor's spouse, and

--(C) the spouse of any such ancestor.

(3) Attribution of indirect holdings and transfers. An individual shall be treated as holding any interest to the extent such interest is held indirectly by such individual through a corporation, partnership, trust, or other entity. If any individual is treated as holding any interest by reason of the preceding sentence, any transfer which results in such interest being treated as no longer held by such individual shall be treated as a transfer of such interest.

(4) Effect of adoption. A relationship by legal adoption shall be

treated as a relationship by blood.

(5) Certain changes treated as transfers. Except as provided in regulations, a contribution to capital or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership shall be treated as a transfer of an interest in such entity to which this section applies if the taxpayer or an applicable family member-

--(A) receives an applicable retained interest in such entity pursuant to such transaction, or

--(B) under regulations, otherwise holds, immediately after such transaction, an applicable retained interest in such entity.

--This paragraph shall not apply to any transaction (other than a contribution to capital) if the interests in the entity held by the transferor, applicable family members, and members of the transferor's family before and after the transaction are substantially identical.

(6) Adjustments. Under regulations prescribed by the Secretary, if there is any subsequent transfer, or inclusion in the gross estate, of any applicable retained interest which was valued under the rules of subsection (a), appropriate adjustments shall be made for purposes of chapter 11, 12, or 13 to reflect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation or to reflect the application of subsection (d).

(7) Treatment as separate interests. The Secretary may by regulation provide that any applicable retained interest shall be treated as 2 or more separate interests for purposes of this section.

§ 2702. Special valuation rules in case of transfers of interests in trusts. (a) Valuation rules. (1) In general. Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

(2) Valuation of retained interests. (A) In general. The value of any retained interest which is not a qualified interest shall be treated as being zero.

(B) Valuation of qualified interest. The value of any retained interest which is a qualified interest shall be determined under section

7520.

(3) Exceptions. (A) In general. This subsection shall not apply to any transfer-

--(i) if such transfer is an incomplete gift,

--(ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust, or

--(iii) to the extent that regulations provide that such transfer is not inconsistent with the purposes of this section.

(B) Incomplete gift. For purposes of subparagraph (A), the term "incomplete gift" means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

(b) Qualified interest. For purposes of this section, the term "qualified interest" means-

(1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,

(2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and

(3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

(c) Certain property treated as held in trust. For purposes of this section- (1) In general. The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

(2) Joint purchases. If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a series of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

(3) Term interest. The term "term interest" means-

(A) a life interest in property, or

(B) an interest in property for a term of years.

(4) Valuation rule for certain term interests. If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property-

(A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and

(B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

(d) Treatment of transfers of interests in portion of trust. In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

(e) Member of the family. For purposes of this section, the term "member of the family" shall have the meaning given such term by section 2704(c)(2).

§ 2703. Certain rights and restrictions disregarded

(a) General rule. For purposes of this subtitle, the value of any property shall be determined without regard to-

(1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or

(2) any restriction on the right to sell or use such property.

(b) Exceptions. Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

(1) It is a bona fide business arrangement.

(2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.

(3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction

§ 2704. Treatment of certain lapsing rights and restrictions. (a) Treatment of lapsed voting or liquidation rights. (1) In general. For purposes of this subtitle, if-

--(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and
--(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

(2) Amount of transfer. For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of-

--(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over
--(B) the value of such interests immediately after the lapse.

(3) Similar rights. The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

(b) Certain restrictions on liquidation disregarded. (1) In general. For purposes of this subtitle, if-

--(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and
--(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

--any applicable restriction shall be disregarded in determining the value of the transferred interest.

(2) Applicable restriction. For purposes of this subsection, the term "applicable restriction" means any restriction-

(A) which effectively limits the ability of the corporation or partnership to liquidate, and

(B) with respect to which either of the following applies:

--(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).
--(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

(3) Exceptions. The term "applicable restriction" shall not include-

--(A) any commercially reasonable restriction which arises as part of

any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

--(B) any restriction imposed, or required to be imposed, by any Federal or State law.

(4) Other restrictions. The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

(c) Definitions and special rules. For purposes of this section-

(1) Control. The term "control" has the meaning given such term by section 2701(b)(2).

(2) Member of the family. The term "member of the family" means, with respect to any individual-

(A) such individual's spouse,

(B) any ancestor or lineal descendant of such individual or such individual's spouse,

(C) any brother or sister of the individual, and

(D) any spouse of any individual described in subparagraph (B) or (C).

(3) Attribution. The rule of section 2701(e)(3) shall apply for purposes of determining the interests held by any individual.

§ 7872. Treatment of loans with below-market interest rates

(a) Treatment of gift loans and demand loans. (1) In general. For purposes of this title, in the case of any below-market loan to which this section applies and which is a gift loan or a demand loan, the forgone interest shall be treated as-

--(A) transferred from the lender to the borrower, and

--(B) retransferred by the borrower to the lender as interest.

(2) Time when transfers made. Except as otherwise provided in regulations prescribed by the Secretary, any forgone interest attributable to periods during any calendar year shall be treated as transferred (and retransferred) under paragraph (1) on the last day of such calendar year.

(b) Treatment of other below-market loans. (1) In general. For

purposes of this title, in the case of any below-market loan to which this section applies and to which subsection (a)(1) does not apply, the lender shall be treated as having transferred on the date the loan was made (or, if later, on the first day on which this section applies to such loan), and the borrower shall be treated as having received on such date, cash in an amount equal to the excess of-

--(A) the amount loaned, over

--(B) the present value of all payments which are required to be made under the terms of the loan.

(2) Obligation treated as having original issue discount. For purposes of this title-

(A) In general. Any below-market loan to which paragraph (1) applies shall be treated as having original issue discount in an amount equal to the excess described in paragraph (1).

(B) Amount in addition to other original issue discount. Any original issue discount which a loan is treated as having by reason of subparagraph (A) shall be in addition to any other original issue discount on such loan (determined without regard to subparagraph (A)).

(c) Below-market loans to which section applies. (1) In general. Except as otherwise provided in this subsection and subsection (g), this section shall apply to-

(A) Gifts. Any below-market loan which is a gift loan.

(B) Compensation-related loans. Any below-market loan directly or indirectly between-

--(i) an employer and an employee, or

--(ii) an independent contractor and a person for whom such independent contractor provides services.

(C) Corporation-shareholder loans. Any below-market loan directly or indirectly between a corporation and any shareholder of such corporation.

(D) Tax avoidance loans. Any below-market loan 1 of the principal purposes of the interest arrangements of which is the avoidance of any Federal tax.

(E) Other below-market loans. To the extent provided in regulations, any below-market loan which is not described in subparagraph (A), (B), (C), or (F) if the interest arrangements of such loan have a significant effect on any Federal tax liability of the lender or the borrower.

(F) Loans to qualified continuing care facilities. Any loan to any qualified continuing care facility pursuant to a continuing care contract.

(2) \$10,000 de minimis exception for gift loans between individuals.

(A) In general. In the case of any gift loan directly between individuals, this section shall not apply to any day on which the aggregate outstanding amount of loans between such individuals does not exceed \$10,000.

(B) De minimis exception not to apply to loans attributable to acquisition of income-producing assets.

--Subparagraph (A) shall not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets.

(C) Cross reference. For limitation on amount treated as interest where loans do not exceed \$100,000, see subsection (d)(1).

(3) \$10,000 de minimis exception for compensation-related and corporate-shareholder loans. (A) In general. In the case of any loan described in subparagraph (B) or (C) of paragraph (1), this section shall not apply to any day on which the aggregate outstanding amount of loans between the borrower and lender does not exceed \$10,000.

(B) Exception not to apply where 1 of principal purposes is tax avoidance. Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

(d) Special rules for gift loans. (1) Limitation on interest accrual for purposes of income taxes where loans do not exceed \$100,000. (A) In general. For purposes of subtitle A, in the case of a gift loan directly between individuals, the amount treated as retransferred by the borrower to the lender as of the close of any year shall not exceed the borrower's net investment income for such year.

(B) Limitation not to apply where 1 of principal purposes is tax avoidance. Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

(C) Special rule where more than 1 gift loan outstanding. For purposes of subparagraph (A), in any case in which a borrower has outstanding more than 1 gift loan, the net investment income of such borrower shall be allocated among such loans in proportion to the respective amounts

which would be treated as retransferred by the borrower without regard to this paragraph.

(D) Limitation not to apply where aggregate amount of loans exceed \$100,000. This paragraph shall not apply to any loan made by a lender to a borrower for any day on which the aggregate outstanding amount of loans between the borrower and lender exceeds \$100,000.

(E) Net investment income. For purposes of this paragraph-

(i) In general. The term "net investment income" has the meaning given such term by section 163(d)(4).

(ii) De minimis rule. If the net investment income of any borrower for any year does not exceed \$1,000, the net investment income of such borrower for such year shall be treated as zero.

(iii) Additional amounts treated as interest. In determining the net investment income of a person for any year, any amount which would be included in the gross income of such person for such year by reason of section 1272 if such section applied to all deferred payment obligations shall be treated as interest received by such person for such year.

(iv) Deferred payment obligations. The term "deferred payment obligation" includes any market discount bond, short-term obligation, United States savings bond, annuity, or similar obligation.

(2) Special rule for gift tax. In the case of any gift loan which is a term loan, subsection (b)(1) (and not subsection (a)) shall apply for purposes of chapter 12.

(e) Definitions of below-market loan and forgone interest. For purposes of this section-

(1) Below-market loan. The term "below-market loan" means any loan if--
--(A) in the case of a demand loan, interest is payable on the loan at a rate less than the applicable Federal rate, or
--(B) in the case of a term loan, the amount loaned exceeds the present value of all payments due under the loan.

(2) Forgone interest. The term "forgone interest" means, with respect to any period during which the loan is outstanding, the excess of--
--(A) the amount of interest which would have been payable on the loan for the period if interest accrued on the loan at the applicable Federal rate and were payable annually on the day referred to in subsection (a)(2), over
--(B) any interest payable on the loan properly allocable to such

period.

(f) Other definitions and special rules. For purposes of this section-

(1) Present value. The present value of any payment shall be determined in the manner provided by regulations prescribed by the Secretary-

--(A) as of the date of the loan, and

--(B) by using a discount rate equal to the applicable Federal rate.

(2) Applicable Federal rate. (A) Term loans. In the case of any term loan, the applicable Federal rate shall be the applicable Federal rate in effect under section 1274(d) (as of the day on which the loan was made), compounded semiannually.

(B) Demand loans. In the case of a demand loan, the applicable Federal rate shall be the Federal short-term rate in effect under section 1274(d) for the period for which the amount of forgone interest is being determined, compounded semiannually.

(3) Gift loan. The term "gift loan" means any below-market loan where the forgoing of interest is in the nature of a gift.

(4) Amount loaned. The term "amount loaned" means the amount received by the borrower.

(5) Demand loan. The term "demand loan" means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan if the benefits of the interest arrangements of such loan are not transferable and are conditioned on the future performance of substantial services by an individual. To the extent provided in regulations, such term also includes any loan with an indefinite maturity.

(6) Term loan. The term "term loan" means any loan which is not a demand loan.

(7) Husband and wife treated as 1 person. A husband and wife shall be treated as 1 person.

(8) Loans to which section 483, 643(i), or 1274 applies. This section shall not apply to any loan to which section 483, 643(i), or 1274 applies.

(9) No withholding. No amount shall be withheld under chapter 24 with respect to-

--(A) any amount treated as transferred or retransferred under

subsection (a), and

--(B) any amount treated as received under subsection (b).

(10) Special rule for term loans. If this section applies to any term loan on any day, this section shall continue to apply to such loan notwithstanding paragraphs (2) and (3) of subsection (c). In the case of a gift loan, the preceding sentence shall only apply for purposes of chapter 12.

(11) Time for determining rate applicable to employee relocation loans. (A) In general. In the case of any term loan made by an employer to an employee the proceeds of which are used by the employee to purchase a principal residence (within the meaning of section 121), the determination of the applicable Federal rate shall be made as of the date the written contract to purchase such residence was entered into.

(B) Paragraph only to apply to cases to which section 217 applies. Subparagraph (A) shall only apply to the purchase of a principal residence in connection with the commencement of work by an employee or a change in the principal place of work of an employee to which section 217 applies.

(g) Exception for certain loans to qualified continuing care facilities. (1) In general. This section shall not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender (or the lender's spouse) attains age 65 before the close of such year.

(2) \$90,000 limit. Paragraph (1) shall apply only to the extent that the aggregate outstanding amount of any loan to which such paragraph applies (determined without regard to this paragraph), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility to which paragraph (1) applies, does not exceed \$90,000.

(3) Continuing care contract. For purposes of this section, the term "continuing care contract" means a written contract between an individual and a qualified continuing care facility under which--

--(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

--(B) the individual or individual's spouse--

--(i) will first--

--(I) reside in a separate, independent living unit with additional facilities outside such unit for the providing of meals and other personal care, and
--(II) not require long-term nursing care, and
--(ii) then will be provided long-term and skilled nursing care as the health of such individual or individual's spouse requires, and
--(C) no additional substantial payment is required if such individual or individual's spouse requires increased personal care services or long-term and skilled nursing care.

(4) Qualified continuing care facility. (A) In general. For purposes of this section, the term "qualified continuing care facility" means 1 or more facilities-

--(i) which are designed to provide services under continuing care contracts, and
--(ii) substantially all of the residents of which are covered by continuing care contracts.

(B) Substantially all facilities must be owned or operated by borrower. A facility shall not be treated as a qualified continuing care facility unless substantially all facilities which are used to provide services which are required to be provided under a continuing care contract are owned or operated by the borrower.

(C) Nursing homes excluded. The term "qualified continuing care facility" shall not include any facility which is of a type which is traditionally considered a nursing home.

(5) Adjustment of limit for inflation. (A) In general. In the case of any loan made during any calendar year after 1986 to which paragraph (1) applies, the dollar amount in paragraph (2) shall be increased by the inflation adjustment for such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of \$100 (or, if such increase is a multiple of \$50, such increase shall be increased to the nearest multiple of \$100).

(B) Inflation adjustment. For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which-

--(i) the CPI for the preceding calendar year exceeds
--(ii) the CPI for calendar year 1985.

1. For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.

(6) Suspension of application. Paragraph (1) shall not apply for any calendar year to which subsection (h) applies.

(h) Exception for loans to qualified continuing care facilities. (1) In general. This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year.

(2) Continuing care contract. For purposes of this section, the term "continuing care contract" means a written contract between an individual and a qualified continuing care facility under which-

--(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

--(B) the individual or individual's spouse will be provided with housing, as appropriate for the health of such individual or individual's spouse-

--(i) in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), and

--(ii) in an assisted living facility or a nursing facility, as is available in the continuing care facility, and

--(C) the individual or individual's spouse will be provided assisted living or nursing care as the health of such individual or individual's spouse requires, and as is available in the continuing care facility.

--The Secretary shall issue guidance which limits such term to contracts which provide only facilities, care, and services described in this paragraph.

(3) Qualified continuing care facility. (A) In general. For purposes of this section, the term "qualified continuing care facility" means 1 or more facilities-

--(i) which are designed to provide services under continuing care contracts,

--(ii) which include an independent living unit, plus an assisted living or nursing facility, or both, and

--(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.

(B) Nursing homes excluded. The term "qualified continuing care facility" shall not include any facility which is of a type which is traditionally considered a nursing home.

(i) Regulations. (1) In general. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including-

--(A) regulations providing that where, by reason of varying rates of interest, conditional interest payments, waivers of interest, disposition of the lender's or borrower's interest in the loan, or other circumstances, the provisions of this section do not carry out the purposes of this section, adjustments to the provisions of this section will be made to the extent necessary to carry out the purposes of this section,

--(B) regulations for the purpose of assuring that the positions of the borrower and lender are consistent as to the application (or nonapplication) of this section, and

--(C) regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower.

(2) Estate tax coordination. Under regulations prescribed by the Secretary, any loan which is made with donative intent and which is a term loan shall be taken into account for purposes of chapter 11 in a manner consistent with the provisions of subsection (b).

§ 6166. Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely Held Business. (a) 5-year deferral; 10-year installment payment.--

(1) In general.--If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds 35 percent of the adjusted gross estate, the executor may elect to pay part or all of the tax imposed by section 2001 in 2 or more (but not exceeding 10) equal installments.

(2) Limitation.--The maximum amount of tax which may be paid in installments under this subsection shall be an amount which bears the

same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as--

(A) the closely held business amount, bears to

(B) the amount of the adjusted gross estate.

(3) Date for payment of installments.--If an election is made under paragraph (1), the first installment shall be paid on or before the date selected by the executor which is not more than 5 years after the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

(b) Definitions and special rules.--

(1) Interest in closely held business.--For purposes of this section, the term "interest in a closely held business" means--

(A) an interest as a proprietor in a trade or business carried on as a proprietorship;

(B) an interest as a partner in a partnership carrying on a trade or business, if--

(i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(ii) such partnership had 45 or fewer partners; or

(C) stock in a corporation carrying on a trade or business if--

(i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(ii) such corporation had 45 or fewer shareholders.

(2) Rules for applying paragraph (1).--For purposes of paragraph (1)--

(A) Time for testing.--Determinations shall be made as of the time immediately before the decedent's death.

(B) Certain interests held by husband and wife.--Stock or a partnership interest which--

(i) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a State, or

(ii) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common, shall be treated as owned by one

shareholder or one partner, as the case may be.

(C) Indirect ownership.--Property owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For purposes of the preceding sentence, a person shall be treated as a beneficiary of any trust only if such person has a present interest in the trust.

(D) Certain interests held by members of decedent's family.--All stock and all partnership interests held by the decedent or by any member of his family (within the meaning of section 267(c)(4)) shall be treated as owned by the decedent.

(3) Farmhouses and certain other structures taken into account.--For purposes of the 35-percent requirement of subsection (a)(1), an interest in a closely held business which is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by such owner or lessee for purposes of operating or maintaining the farm.

(4) Value.--For purposes of this section, value shall be value determined for purposes of chapter 11 (relating to estate tax).

(5) Closely held business amount.--For purposes of this section, the term "closely held business amount" means the value of the interest in a closely held business which qualifies under subsection (a)(1).

(6) Adjusted gross estate.--For purposes of this section, the term, "adjusted gross estate" means the value of the gross estate reduced by the sum of the amounts allowable as a deduction under section 2053 or 2054. Such sum shall be determined on the basis of the facts and circumstances in existence on the date (including extensions) for filing the return of tax imposed by section 2001 (or, if earlier, the date on which such return is filed).

(7) Partnership interests and stock which is not readily tradable.--

(A) In general.--If the executor elects the benefits of this paragraph (at such time and in such manner as the Secretary shall by regulations prescribe), then--

(i) for purposes of paragraph (1)(B)(i) or (1)(C)(i) (whichever is appropriate) and for purposes of subsection (c), any capital interest in a partnership and any non-readily-tradable stock which (after the

application of paragraph (2)) is treated as owned by the decedent shall be treated as included in determining the value of the decedent's gross estate,

(ii) the executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a), and

(iii) for purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.

(B) Non-readily-tradable stock defined.--For purposes of this paragraph, the term "non-readily-tradable stock" means stock for which, at the time of the decedent's death, there was no market on a stock exchange or in an over-the-counter market.

(8) Stock in holding company treated as business company stock in certain cases.--

(A) In general.--If the executor elects the benefits of this paragraph, then--

(i) Holding company stock treated as business company stock.--For purposes of this section, the portion of the stock of any holding company which represents direct ownership (or indirect ownership through 1 or more other holding companies) by such company in a business company shall be deemed to be stock in such business company.

(ii) 5-year deferral for principal not to apply.--The executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a).

(iii) 2-percent interest rate not to apply.--For purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.

(B) All stock must be non-readily-tradable stock.--

(i) In general.--No stock shall be taken into account for purposes of applying this paragraph unless it is non-readily-tradable stock

(within the meaning of paragraph (7)(B)).

(ii) Special application where only holding company stock is non-readily-tradable stock.--If the requirements of clause (i) are not met, but all of the stock of each holding company taken into account is non-readily-tradable, then this paragraph shall apply, but subsection (a)(1) shall be applied by substituting "5" for "10".

(C) Application of voting stock requirement of paragraph (1)(C)(i).--For purposes of clause (i) of paragraph (1)(C), the deemed

stock resulting from the application of subparagraph (A) shall be treated as voting stock to the extent that voting stock in the holding company owns directly (or through the voting stock of 1 or more other holding companies) voting stock in the business company.

(D) Definitions.--For purposes of this paragraph--

(i) Holding company.--The term "holding company" means any corporation holding stock in another corporation.

(ii) Business company.--The term "business company" means any corporation carrying on a trade or business.

(9) Deferral not available for passive assets.--

(A) In general.--For purposes of subsection (a)(1) and determining the closely held business amount (but not for purposes of subsection (g)), the value of any interest in a closely held business shall not include the value of that portion of such interest which is attributable to passive assets held by the business.

(B) Passive asset defined.--For purposes of this paragraph--

(i) In general.--The term "passive asset" means any asset other than an asset used in carrying on a trade or business.

(ii) Stock treated as passive asset.--The term "passive asset" includes any stock in another corporation unless--

(I) such stock is treated as held by the decedent by reason of an election under paragraph (8), and

(II) such stock qualified under subsection (a)(1).

(iii) Exception for active corporations.--If--

(I) a corporation owns 20 percent or more in value of the voting stock of another corporation, or such other corporation has 45 or fewer shareholders, and

(II) 80 percent or more of the value of the assets of each such corporation is attributable to assets used in carrying on a trade or business, then such corporations shall be treated as 1 corporation for purposes of clause (ii). For purposes of applying subclause (II) to the corporation holding the stock of the other corporation, such stock shall not be taken into account.

(10) Stock in qualifying lending and finance business treated as stock in an active trade or business company.--

(A) In general.--If the executor elects the benefits of this paragraph, then--

(i) Stock in qualifying lending and finance business treated as stock in an active trade or business company.--For purposes of this section, any asset used in a qualifying lending and finance business shall be treated as an asset which is used in carrying on a trade or business.

(ii) 5-year deferral for principal not to apply.--The executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a).

(iii) 5 equal installments allowed.--For purposes of applying subsection

(a)(1), "5" shall be substituted for "10".

(B) Definitions.--For purposes of this paragraph--

(i) Qualifying lending and finance business.--The term "qualifying lending and finance business" means a lending and finance business, if--

(I) based on all the facts and circumstances immediately before the date of the decedent's death, there was substantial activity with respect to the lending and finance business, or

(II) during at least 3 of the 5 taxable years ending before the date of the decedent's death, such business had at least 1 full-time employee substantially all of whose services were the active management of such business, 10 full-time, nonowner employees substantially all of whose services were directly related to such business, and \$5,000,000 in gross receipts from activities described in clause (ii).

(ii) Lending and finance business.--The term "lending and finance business" means a trade or business of--

(I) making loans,

(II) purchasing or discounting accounts receivable, notes, or installment obligations,

(III) engaging in rental and leasing of real and tangible personal property, including entering into leases and purchasing, servicing, and disposing of leases and leased assets,

(IV) rendering services or making facilities available in the ordinary course of a lending or finance business, and

(V) rendering services or making facilities available in connection with activities described in subclauses (I) through (IV) carried on by the corporation rendering services or making facilities available, or another corporation which is a member of the same affiliated group (as defined in section 1504 without regard to section 1504(b)(3)).

(iii) Limitation.--The term "qualifying lending and finance business" shall not include any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years before the date of the decedent's death.

(c) Special rule for interest in 2 or more closely held businesses.--For purposes of this section, interest in 2 or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate 20 percent or more of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 20-percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as having been included in determining the value of the decedent's gross estate.

(d) Election.--Any election under subsection (a) shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe. If an election under subsection (a) is made, the provisions of this subtitle shall apply as though the Secretary were extending the time for payment of the tax.

(e) Proration of deficiency to installments.--If an election is made under subsection (a) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subsection (a)(2)) be prorated to the installments payable under subsection (a). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(f) Time for payment of interest.--If the time for payment of any amount of tax has been extended under this section--

(1) Interest for first 5 years.--Interest payable under section 6601 of any unpaid portion of such amount attributable to the first 5 years after the date prescribed by section 6151(a) for payment of the tax shall be paid annually.

(2) Interest for periods after first 5 years.--Interest payable under section 6601 on any unpaid portion of such amount attributable to any period after the 5-year period referred to in paragraph (1) shall be paid annually at the same time as, and as a part of, each installment payment of the tax.

(3) Interest in the case of certain deficiencies.--In the case of a deficiency to which subsection (e) applies which is assessed after the close of the 5-year period referred to in paragraph (1), interest attributable to such 5-year period, and interest assigned under paragraph (2) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

(4) Selection of shorter period.--If the executor has selected a period shorter than 5 years under subsection (a)(3), such shorter period shall be substituted for 5 years in paragraphs (1), (2), and (3) of this subsection.

(g) Acceleration of payment.--

(1) Disposition of interest; withdrawal of funds from business.--

(A) If--

(i)(I) any portion of an interest in a closely held business which qualifies under subsection (a)(1) is distributed, sold, exchanged, or otherwise disposed of, or

(II) money and other property attributable to such an interest is withdrawn from such trade or business, and

(ii) the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of such interest, then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

(B) In the case of a distribution in redemption of stock to which

section 303 (or so much of section 304 as relates to section 303) applies--

(i) the redemption of such stock, and the withdrawal of money and other property distributed in such redemption, shall not be treated as a distribution or withdrawal for purposes of subparagraph (A), and

(ii) for purposes of subparagraph (A), the value of the interest in the closely held business shall be considered to be such value reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (a)(3) for the payment of the first installment which becomes due after the date of the distribution (or, if earlier, on or before the day which is 1 year after the date of the distribution), there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

(C) Subparagraph (A)(i) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of subparagraph (A)(i) as an interest qualifying under subsection (a)(1).

(D) Subparagraph (A)(i) does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, the applicable law of descent and distribution, or a trust created by the decedent. A similar rule shall apply in the case of a series of subsequent transfers of the property by reason of death so long as each transfer is to a member of the family (within the meaning of section 267(c)(4)) of the transferor in such transfer.

(E) Changes in interest in holding company.--If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)--

(i) any disposition of any interest in such stock in such holding company which was included in determining the gross estate of the decedent, or

(ii) any withdrawal of any money or other property from such holding company attributable to any interest included in determining the gross

estate of the decedent,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1).

(F) Changes in interest in business company.--If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)--

(i) any disposition of any interest in such stock in the business company by such holding company, or

(ii) any withdrawal of any money or other property from such business company attributable to such stock by such holding company owning such stock,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1).

(2) Undistributed income of estate.--

(A) If an election is made under this section and the estate has undistributed net income for any taxable year ending on or after the due date for the first installment, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of--

(i) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a) (relating to deductions for distributions, etc.);

(ii) the amount of tax imposed for the taxable year on the estate under chapter 1; and

(iii) the amount of the tax imposed by section 2001 (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

(C) For purposes of this paragraph, if any stock in a corporation is

treated as stock in another corporation by reason of subsection (b)(8)(A), any dividends paid by such other corporation to the corporation shall be treated as paid to the estate of the decedent to the extent attributable to the stock qualifying under subsection (a)(1).

(3) Failure to make payment of principal or interest.--

(A) In general.--Except as provided in subparagraph (B), if any payment of principal or interest under this section is not paid on or before the date fixed for its payment by this section (including any extension of time), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

(B) Payment within 6 months.--If any payment of principal or interest under this section is not paid on or before the date determined under subparagraph (A) but is paid within 6 months of such date--

(i) the provisions of subparagraph (A) shall not apply with respect to such payment,

(ii) the provisions of section 6601(j) shall not apply with respect to the determination of interest on such payment, and

(iii) there is imposed a penalty in an amount equal to the product of--

(I) 5 percent of the amount of such payment, multiplied by

(II) the number of months (or fractions thereof) after such date and before payment is made. The penalty imposed under clause (iii) shall be treated in the same manner as a penalty imposed under subchapter B of chapter 68.

(h) Election in case of certain deficiencies.--

(1) In general.--If--

(A) a deficiency in the tax imposed by section 2001 is assessed,

(B) the estate qualifies under subsection (a)(1), and

(C) the executor has not made an election under subsection (a), the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) Time of election.--An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary for the payment of the deficiency, and shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Effect of election on payment.--If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (a)(2)) be prorated to the installments which would have been due if an election had been timely made under subsection (a) at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(i) Special rule for certain direct skips.--To the extent that an interest in a closely held business is the subject of a direct skip (within the meaning of section 2612(c)) occurring at the same time as and as a result of the decedent's death, then for purposes of this section any tax imposed by section 2601 on the transfer of such interest shall be treated as if it were additional tax imposed by section 2001.

(j) Regulations.--The Secretary shall prescribe such regulations as may be necessary to the application of this section.

(k) Cross references.--

(1) Security.-- For authority of the Secretary to require security in the case of an extension under this section, see section 6165.

(2) Lien.--For special lien (in lieu of bond) in the case of an extension under this section, see section 6324A.

(3) Period of limitation.--For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

(4) Interest.--For provisions relating to interest on tax payable in installments under this section, see subsection (j) of section 6601.

(5) Transfers within 3 years of death.--For special rule for qualifying an estate under this section where property has been transferred within 3 years of decedent's death, see section 2035(c)(2).

ARTICLE 27

CORPORATE TAX PROCEDURE AND ADMINISTRATION

Section 1080. Application of article.

1081. Notice of deficiency.

- 1082. Assessment.
- 1083. Limitations on assessment.
- 1084. Interest on underpayment.
- 1085. Additions to tax and civil penalties.
- 1086. Overpayment.
- 1087. Limitations on credit or refund.
- 1088. Interest on overpayment.
- 1089. Petition to tax commission.
- 1090. Review of tax commission decision.
- 1091. Mailing rules; holidays; miscellaneous.
- 1092. Collection, levy and liens.
- 1093. Transferees.
- 1094. Jeopardy assessment.
- 1095. Criminal penalties; cross-reference.
- 1096. General powers of tax commission.
- 1097. Disposition of revenue.

§ 1080. Application of article.--- (a) General.--- The provisions of this article shall apply to the administration of and the procedures with respect to the taxes imposed by articles nine, and nine-a of this chapter for taxable years or periods ending on or after December thirty-first, nineteen hundred sixty-four.

(b) Definitions.--- As used in this article, where not otherwise specifically defined and unless a different meaning is clearly required---

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

(2) The term "corporation" includes a corporation, association (including a limited liability company), joint stock company or other entity subject to tax under article nine, nine-a, nine-b or nine-c.

(3) The term "person" includes a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual liable for the tax imposed by article nine, nine-a, nine-b or nine-c, or under a duty to perform an act under this article or under article nine, nine-a, nine-b or nine-c.

§ 1081. Notice of deficiency.-- (a) General.-- If upon examination of a taxpayer's return under article nine, nine-a, nine-b or nine-c, the tax commission determines that there is a deficiency of tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a tax return required under article nine, nine-a, nine-b or nine-c, the tax commission is authorized to estimate the taxpayer's New York tax liability from any information in its possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at its last known address in or out of this state. If the taxpayer has terminated its existence, a notice of deficiency may be mailed to its last known address in or out of this state, unless the tax commission has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment.--After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax commission a petition under section one thousand eighty-nine. If the notice of deficiency is addressed to a taxpayer whose last known address is outside of the United States, such period shall be one hundred fifty days instead of ninety days.

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

(d) Exceptions for mathematical or clerical errors.--If a mathematical or clerical error appears on a return (including an overstatement of the amount paid as estimated tax), the commissioner shall notify the taxpayer that an amount of tax in excess of that shown upon the return

is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subsection (f) of section one thousand eighty-seven (limiting credits or refunds after petition to the division of tax appeals), subsection (b) of section one thousand eighty-nine (authorizing the filing of a petition with the division of tax appeals based on a notice of deficiency), or article forty of this chapter, nor shall such assessment or collection be prohibited by the provisions of subsection (c).

(e) Exception where change in federal taxable income is not reported.--

(1) If the taxpayer fails to comply with subdivision three of section two hundred eleven or with section two hundred nineteen-bb or with section two hundred nineteen-zz in not reporting a change or correction or renegotiation, or computation or recomputation of tax, increasing or decreasing its federal taxable income or federal alternative minimum taxable income as reported on its federal income tax return or in not reporting a change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes or in not filing an amended return, instead of the mode and time of assessment provided for in subsection (b) of this section, the tax commission may assess a deficiency based upon such increased or decreased federal taxable income or federal alternative minimum taxable income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal change or correction or renegotiation, or computation or recomputation of tax, or an amended return, where such return was required by subdivision three of section two hundred eleven or by section two hundred nineteen-bb or by section two hundred nineteen-zz, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subsection (f) of section one thousand eighty-seven (limiting credits or refunds after petition to the tax

commission), or subsection (b) of section one thousand eighty-nine (authorizing the filing of a petition with the tax commission based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subsection (c).

(3) If the taxpayer has terminated its existence, a notice of additional tax due may be mailed to its last known address in or out of this state, unless the tax commission has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

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

(g) Two or more corporations.--In the case of a combined return under article nine-a or a consolidated return under article nine-b or nine-c of two or more corporations, the tax commission may determine a deficiency of tax under article nine-a, nine-b or nine-c with respect to the entire tax due upon such return against any taxpayer included therein. In the case of a taxpayer which might have been included in such a return under article nine-a, nine-b or nine-c when the tax under such articles was originally reported, the tax commission may determine a deficiency of tax under article nine-a, nine-b or nine-c against such taxpayer and against any other taxpayers which might have been included in such a return.

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

(i) Exception for final determination of refund or credit of retaliatory taxes.--

(1) If the taxpayer files the report required under paragraph (2) of subdivision (e) of section fifteen hundred fifteen of this chapter within the time prescribed by such paragraph, in respect of a final determination of a refund or credit of retaliatory taxes or other charges, the amount of the refund or credit of such taxes or charges paid for which the taxpayer has been allowed a credit pursuant to subdivision (c) of section fifteen hundred eleven of this chapter and in respect to which the taxpayer filed such report shall be deemed assessed on the date of filing such report. If payment of such amount does not accompany the report, the tax commission shall issue a notice and demand for the unpaid amount, together with any interest, additions to tax and penalties, pursuant to subsection (b) of section one thousand ninety-two.

(2) If the taxpayer fails to file the report required under paragraph (2) of subdivision (e) of section fifteen hundred fifteen of this chapter within the time prescribed by such paragraph, in respect of a final determination of a refund or credit of retaliatory taxes or other charges, the amount of the refund or credit of such taxes or charges paid for which the taxpayer has been allowed a credit pursuant to subdivision (c) of section fifteen hundred eleven of this chapter and in respect to which the taxpayer was required to file such report shall be deemed assessed on the last date prescribed for the filing of such report. The tax commission shall issue a notice and demand for the unpaid amount, together with any interest, additions to tax and penalties, pursuant to subsection (b) of section one thousand ninety-two.

(3) The assessments provided for in paragraphs (1) and (2) of this subsection or collection thereof shall not be prohibited by the provisions of subsection (c).

§ 1082. Assessment.---(a) Assessment date.--- (1) The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical or clerical error, shall be deemed to be assessed on the date of filing of the return

(including any amended return showing an increase of tax). If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subsection (b) of section one thousand eighty-one if no petition to the division of tax appeals is filed, or if a petition is filed, then upon the date when a determination or decision rendered in the division of tax appeals establishing the amount of the deficiency becomes final.

(2) If a report or an amended return filed pursuant to subdivision three of section two hundred eleven or section two hundred nineteen-bb or two hundred nineteen-zz concedes the accuracy of a federal change or correction or renegotiation, or computation or recomputation of tax, any deficiency in tax under article nine-a, nine-b or nine-c resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section one thousand eighty-three. If a notice of additional tax due, as prescribed in subsection (e) of section one thousand eighty-one, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subsection unless within thirty days after the mailing of such notice a report of the federal change or correction or renegotiation or computation or recomputation of tax, or an amended return, where such return was required by subdivision three of section two hundred eleven or by section two hundred nineteen-bb or by section two hundred nineteen-zz, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(3) If the taxpayer files the report required under paragraph (2) of subdivision (e) of section fifteen hundred fifteen of this chapter within the time prescribed by such paragraph, in respect of a final determination of a refund or credit of retaliatory taxes or other charges, the amount of the refund or credit of such taxes or charges paid for which the taxpayer has been allowed a credit pursuant to subdivision (c) of section fifteen hundred eleven of this chapter and in respect to which the taxpayer filed such report shall be deemed assessed on the date of filing such report; if the taxpayer fails to file such a required report within the time prescribed, such amount shall be deemed assessed on the last date prescribed for filing of such report; either such assessment shall be timely notwithstanding section one thousand

eighty-three.

(4) Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers.---If the mode or time for the assessment of any tax under article nine, nine-a, nine-b or nine-c (including interest, additions to tax and assessable penalties) is not otherwise provided for, the tax commission may establish the same by regulations.

(c) Estimated tax.---No unpaid amount of estimated tax under article nine-a, nine-b or nine-c shall be assessed.

(d) Supplemental assessment.--- The tax commission may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section one thousand eighty-one where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference.--- For assessment in case of jeopardy, see section one thousand ninety-four.

§ 1083. Limitations on assessment.--- (a) General.--- Except as otherwise provided in this section, any tax under article nine, nine-a, nine-b or nine-c shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

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

(c) Exceptions.---

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

(A) no return is filed,

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

(C) in the case of the tax imposed under article nine-a, nine-b or nine-c, the taxpayer fails to file a report or amended return required under subdivision three of section two hundred eleven or section two hundred nineteen-bb or two hundred nineteen-zz, in respect of an

increase or decrease in federal taxable income or federal alternative minimum taxable income or federal tax, or in respect of a change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, or

(D) it is assessed in respect of a final determination of a refund or credit of retaliatory taxes or other charges as prescribed by paragraphs (1) and (2) of subsection (i) of section one thousand eighty-one. For any such assessment, the amount of the assessment of tax shall not exceed the amount of the increase in New York tax attributable to such refund or credit. The provisions of this subparagraph shall not extend the time within which or affect the amount for which an assessment may otherwise be made.

(2) Extension by agreement.---Where, before the expiration of the time prescribed in this section for the assessment of tax, both the tax commission and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal income.---In the case of the tax imposed under article nine-a, nine-b or nine-c, if the taxpayer files a report or amended return required under subdivision three of section two hundred eleven or section two hundred nineteen-bb or two hundred nineteen-zz, in respect of an increase or decrease in federal taxable income or federal alternative minimum taxable income or federal tax, or in respect of a change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in New York tax attributable to such federal change or correction or renegotiation, or computation or recomputation of tax. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiency attributable to carryback.---If a deficiency of tax under article nine-a is attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

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

(6) Request for prompt assessment.---The tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the taxpayer or by a fiduciary representing the taxpayer, but not more than three years after the return was filed, except as otherwise provided in this subsection and subsection (d). This subsection shall not apply unless---

(A) (i) such written request notifies the tax commission that the taxpayer contemplates dissolution at or before the expiration of such eighteen-month period, (ii) the dissolution is in good faith begun before the expiration of such eighteen-month period, and (iii) the dissolution is completed;

(B) (i) such written request notifies the tax commission that a dissolution has in good faith been begun, and (ii) the dissolution is completed; or

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

(7) Change of the allocation of taxpayer's income or capital.---No change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based shall be made where an assessment of tax is made during the additional period of limitation under subparagraph (C) of paragraph (1), or under paragraph (3) or (4); and where any such assessment has been made, or where a notice of deficiency has been mailed to the taxpayer on the basis of any such proposed assessment, no change of the allocation of income or capital shall be made in a proceeding on the taxpayer's claim for refund of such

assessment or on the taxpayer's petition for redetermination of such deficiency.

(8) Report concerning waste treatment facility, air pollution control facility or eligible business facility. Under the circumstances described in subparagraph (3) of paragraph (g) of subdivision nine of section two hundred eight, paragraph (f) of subdivision eleven of section two hundred ten or paragraph (f) of subdivision eleven of section two hundred nineteen-q of this chapter, the tax may be assessed within three years after the filing of the report containing the information required by such paragraph, or, if a certificate of compliance in respect to an air pollution control facility shall be revoked, within three years after the tax commission shall receive notice of such revocation from the taxpayer or as required by subdivision three of section 19-0309 of the environmental conservation law, whichever notice is received earlier.

(9) Reports concerning empire zone credits. If a taxpayer's certification under article eighteen-B of the general municipal law is revoked with respect to an empire zone or zone equivalent area, any tax liability generated by reason of such decertification may be assessed within three years after the commissioner has received notice of such decertification as required by subdivision (a) of section nine hundred fifty-nine of the general municipal law.

(10) Reports concerning a certificate of completion. If a taxpayer's certificate of completion issued pursuant to section 27-1419 of the environmental conservation law is revoked by a determination issued pursuant to section 27-1419 of the environmental conservation law, any tax liability generated by reason of such revocation may be assessed within one year after such determination is final and is no longer subject to judicial review.

* (11) Extended statute of limitations for tax avoidance transactions.--(A) If a taxpayer fails to file, disclose or provide any statement, return or other information for any taxable year with respect to a listed transaction (as defined in paragraph three of subsection (p) of section one thousand eighty-five of this article) which is required under subdivision (a) of section twenty-five of this chapter, the time for assessment of any tax imposed by this article with respect to such transaction shall not expire before the date which is one year after the

earlier of:

(i) the date on which the commissioner is furnished the statement, return, or information so required, or

(ii) the date that the requirements of subdivision (c) of section twenty-five of this chapter are met with respect to a request under such subdivision by the commissioner relating to such transaction.

(B) If later than the time for assessment otherwise provided by this section, tax may be assessed at any time within six years after the return was filed if the deficiency is attributable to an abusive tax avoidance transaction.

(C) For purposes of subparagraph (B) of this paragraph, an "abusive tax avoidance transaction" means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, listed transactions described in paragraph five of subsection (k-1) of section one thousand eighty-five of this article.

* NB Repealed July 1, 2029

(12) Except as otherwise provided in paragraph three of this subsection, or as otherwise provided in this section where a longer period of time may apply, if a taxpayer files an amended return, an assessment of tax (if not deemed to have been made upon the filing of the amended return), including recovery of a previously paid refund, attributable to a change or correction on the amended return from a prior return may be made at any time within one year after such amended return is filed.

(d) Omission of income on return.---The tax may be assessed at any time within six years after the return was filed if (i) a taxpayer omits from gross income required to be reported on a return under article nine, nine-a, nine-b or nine-c an amount properly includible therein which is in excess of twenty-five percent of the amount of gross income stated in the return or, (ii) a taxpayer omits from the sum of its items of tax preference and its adjustment required in the computation of minimum taxable income an amount properly includible therein which is in excess of twenty-five percent of such sum as stated in the return.

For purposes of this subsection---

(1) the term gross income means gross income for federal income tax

purposes as reportable on a return under article nine-a, and "gross earnings", "gross income", "gross operating income" and "gross direct premiums less return premiums", as those terms are used in article nine, nine-b or nine-c, whichever is applicable;

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

(e) Suspension of running of period of limitation.---The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the tax commission is prohibited under subsection (c) of section one thousand eighty-one from making the assessment or from collecting by levy.

§ 1084. Interest on underpayment.---(a) General.--If any amount of tax is not paid on or before the last date prescribed in article nine or nine-a of this chapter for payment, interest on such amount at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this article, or if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subsection shall not be paid if the amount thereof is less than one dollar.

(b) Exception as to estimated tax.---This section shall not apply to any failure to pay estimated tax under article nine-a, nine-b or nine-c.

(c) Exception for mathematical or clerical error.--- No interest shall be imposed on any underpayment of tax due solely to mathematical or clerical error if the taxpayer files a return within the time prescribed in article nine or nine-A (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) Suspension of interest on deficiencies.---If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the tax commission for payment of such deficiency is not made within thirty days after the filing of such

waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

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

(f) Interest treated as tax.---Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax under article nine, nine-a, nine-b or nine-c. Any reference in this article to the tax imposed by article nine, nine-a, nine-b or nine-c shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax.---Interest shall be imposed under subsection (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within twenty-one calendar days from the date of the notice and demand therefor under subsection (b) of section one thousand ninety-two of this article (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars) and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment within specified period after notice and demand.---If notice and demand is made for payment of any amount under subsection (b) of section one thousand ninety-two of this article, and if such amount is paid within twenty-one calendar days (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

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

relates may be assessed and collected, respectively.

(j) Interest on erroneous refund.---Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner, shall bear interest at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this article, or if no rate is set, at the rate of seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

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

§ 1085. Additions to tax and civil penalties.---(a) (1) Failure to file return.---(A) In case of failure to file a return under article nine, nine-a, nine-b or nine-c on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed

upon the return.

(2) Failure to pay tax shown on return.--In case of failure to pay the amounts shown as tax on any return required to be filed under article nine, nine-a, nine-b or nine-c on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one per cent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return.--In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under article nine or nine-a which is not so shown (including an assessment made pursuant to subsection (a) of section one thousand eighty-two of this article) within twenty-one calendar days of the date of a notice and demand therefor (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.--

(A) With respect to any return, the amount of the addition under

paragraph one of this subsection shall be reduced by the amount of the addition under paragraph two of this subsection for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subsection, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subsection shall be reduced by the amount of the addition under paragraph one of this subsection (determined without regard to subparagraph (B) of such paragraph one) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(b) Deficiency due to negligence.---(1) If any part of a deficiency is due to negligence or intentional disregard of this article or article nine, nine-a, nine-b or nine-c, or rules or regulations thereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the deficiency.

(2) There shall be added to the tax (in addition to the amount determined under paragraph one of this subsection) an amount equal to fifty percent of the interest payable under section one thousand eighty-four with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in gross income, as that term is defined in paragraph one of subsection (d) of section one thousand eighty-three, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subsection, as due to negligence in the absence of clear and convincing evidence to the

contrary. If any penalty is imposed under this subsection by reason of the preceding sentence, the amount of the penalty imposed by paragraph one of this subsection shall be five percent of the portion of the underpayment which is attributable to the failure described in the preceding sentence.

(c) Failure to file declaration or underpayment of estimated tax.--

(1) If any taxpayer fails to file a declaration of estimated tax under article nine-A of this chapter, or fails to pay all or any part of an amount which is applied as an installment against such estimated tax, it shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this article, or if no rate is set, at the rate of seven and one-half percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. Provided, however, that, for taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen, no amount shall be added to the tax with respect to the portion of such tax related to the amount of any interest deductions directly or indirectly attributable to the amount included in exempt CFC income pursuant to subparagraph (ii) of paragraph (b) of subdivision six-a of section two hundred eight of this chapter or the forty percent reduction of such exempt CFC income in lieu of interest attribution if the election described in paragraph (b) of subdivision six-a of such section is made. The amount of the underpayment shall be, with respect to any installment of estimated tax computed on the basis of either the preceding year's tax or the second preceding year's tax, the excess of the amount required to be paid over the amount, if any, paid on or before the last day prescribed for such payment or, with respect to any other installment of estimated tax, the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety-one percent of the tax shown on the return for the taxable year (or if no return was filed, ninety-one percent of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. In any case in which there would be no underpayment if "eighty percent" were substituted for

"ninety-one percent" each place it appears in this subsection, the addition to the tax shall be equal to seventy-five percent of the amount otherwise determined. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the termination of existence of the taxpayer.

(2) For purposes of applying the addition to tax for an underpayment of any installment of estimated tax by a taxpayer subject to tax pursuant to article thirty-three of this chapter, the amount of tax shall be determined by using the lesser of the differential earnings rate (as described in subsection (c) of section eight hundred nine of the internal revenue code) of the second tax year preceding the taxable year for which the installment is made, or the differential earnings rate for the taxable year for which the installment is made. Such addition to tax shall be applied to any taxable year without regard to any adjustments to the differential earnings amount under subsection (f) of section eight hundred nine of the internal revenue code for such year.

(3) The provisions of this subsection and subsections (d) and (e) of this section shall apply to the failure of a taxpayer to file a declaration of estimated tax surcharge or the failure to pay all or any part of an amount which is applied as an installment against such estimated tax surcharge pursuant to sections one hundred ninety-seven-a, one hundred ninety-seven-b, two hundred thirteen-a, two hundred thirteen-b, fifteen hundred thirteen and fifteen hundred fourteen of this chapter. For purposes of applying this section and subsections (d) and (e) of this section to the estimated tax surcharge, where appropriate the term "tax" shall be read to mean "tax surcharge," and the terms "amount required to be paid," "amount which would be required to be paid," and "amount which would have been required to be paid" shall be computed as the product of (1) such amount computed without regard to the tax surcharges imposed under sections one hundred eighty-four-a, one hundred eighty-six-c, one hundred eighty-eight, two hundred nine-A, two hundred nine-B, fifteen hundred five-a, and fifteen hundred twenty of this chapter, and (2) the MTA percentage. The term "MTA percentage" shall mean the product of (A) the tax rate applicable under such sections imposing such surcharges and (B) the percentage utilized in determining the portion of the taxpayer's business activity

carried on within the metropolitan commuter transportation district under such sections.

(d) Exception to addition for underpayment of estimated tax.--The addition to tax under subsection (c) with respect to any underpayment of any amount which is applied as an installment against estimated tax under article nine-a, nine-b or nine-c shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of any such amount equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least--

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

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

(3) Annualized income installment. (A) General. An amount equal to ninety-one percent of the tax for the taxable year computed on all items entering into the computation of the tax or taxes of the taxpayer for the taxable year under article nine, nine-A or thirty-three of this chapter. For purposes of computing the tax, all items of receipts, income and expenses shall be placed on an annualized basis--

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

(ii) for the first six months of the taxable year, in the case of the installment required to be paid in the ninth month, and

(iii) for the first nine months of the taxable year, in the case of the installment required to be paid in the twelfth month.

(B) Special rules. For purposes of subparagraph (A), items of receipts, income and expenses shall be placed on an annualized basis by--

(i) multiplying such items by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year), and

(ii) dividing the resulting amounts by the number of months referred

to in subparagraph (A) (or in subparagraph (C), if an election applies to the taxable year under such subparagraph).

(C) Election for different annualization periods. (i) If the taxpayer makes an election under this clause--

(I) Clause (i) of subparagraph (A) of this paragraph shall be applied by substituting "four months" for "three months",

(II) Clause (ii) of subparagraph (A) of this paragraph shall be applied by substituting "seven months" for "six months",

(III) Clause (iii) of subparagraph (A) of this paragraph shall be applied by substituting "ten months" for "nine months".

(ii) If the taxpayer makes an election under this clause--

(I) Clause (i) of subparagraph (A) of this paragraph shall be applied by substituting "five months" for "three months",

(II) Clause (ii) of subparagraph (A) of this paragraph shall be applied by substituting "eight months" for "six months",

(III) Clause (iii) of subparagraph (A) of this paragraph shall be applied by substituting "eleven months" for "nine months".

(iii) An election under clause (i) or (ii) of this subparagraph shall apply to the taxable year for which made and such an election shall be effective only if made on or before the date required for filing the declaration of estimated tax for such taxable year, or

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

(i) take the items entering into the computation of the tax or taxes of the taxpayer for the taxable year under article nine, nine-A or thirty-three of this chapter, for all months during the taxable year preceding the filing month,

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

(iii) determine the tax on the amounts determined under clause (ii), and

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

(B) For purposes of subparagraph (A)--

(i) the base period percentage for any period of months shall be the

average percent which the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years. The tax commission may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances, and

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

(5) In the case of any declaration installment, any reduction in such installment resulting from the application of paragraph three or four of this subsection shall be recaptured by increasing the amount of the next installment determined under paragraph one or two of this subsection or paragraph one of subsection (c) of this section by the amount of such reduction (and by increasing subsequent installments to the extent that the reduction has not previously been recaptured under this paragraph). For purposes of the preceding sentence, a declaration installment means any installment of estimated tax other than the mandatory first installment required under paragraph (a) of subdivision one of section one hundred ninety-seven-b, subdivision (a) of section two hundred thirteen-b or subdivision (a) of section fifteen hundred fourteen of this chapter.

For the purposes of this subsection the amounts specified in paragraphs (2), (3) and (4) shall be computed without regard to any increase in the rates applicable to the taxable year which may have become effective after the first day of the seventh month of such year.

(e) (1) Paragraphs (1) and (2) of subsection (d) of this section shall not apply in the case of any corporation (or any predecessor corporation) which had business income, or the portion thereof allocated within the state, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved; provided, however, that in the case of a corporation subject to tax under section fifteen hundred two-a of this chapter, paragraphs (1) and (2) of subsection (d) of this section shall not apply if such corporation had entire net income, or the portion thereof allocated within the state, of one million dollars or more for any of the three taxable years immediately preceding the taxable year involved, or if the

direct premiums subject to tax under section fifteen hundred two-a of this chapter of the corporation for any of such three preceding taxable years beginning on or after January first, two thousand three equals or exceeds three million seven hundred fifty thousand dollars.

(2) In the case of taxpayers described in paragraph one of this subsection, paragraph one of subsection (c), subparagraph (A) of paragraph three of subsection (d), and subparagraph (A) of paragraph four of subsection (d) of this section shall be applied by substituting "one hundred percent" for "ninety-one percent" each place it appears.

(e-1) Waiver of addition for underpayment of estimated tax. No addition to tax shall be imposed under subsection (c) of this section with respect to any underpayment to the extent the commissioner determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(f) Deficiency due to fraud.---(1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to two times the deficiency.

(2) The addition to tax under this subsection shall be in lieu of any other addition to tax imposed by subsection (a) or (b).

(g) Additional penalty.---Any person who with fraudulent intent shall fail to pay under article nine, nine-a, nine-b or nine-c, any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under such article, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this article, to be imposed, assessed and collected by the tax commission. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.

(h) Additions treated as tax.---The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this article to tax imposed by article nine, nine-a, nine-b or nine-c shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section one thousand eighty-one, this subsection shall not apply to---

(1) any addition to tax under subsection (a) except as to that portion

attributable to a deficiency;

(2) any addition to tax under subsection (c) or (o); and

(3) any additional penalties under subsections (g) and (l).

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

(j) Person defined.---For purposes of subsections (g) and (l), the term person includes an individual, corporation, partnership or limited liability company or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, or a member, employee or manager of a limited liability company, who as such officer, employee, manager or member is under a duty to perform the act in respect of which the violation occurs.

* (k) Substantial understatement of liability.-- (1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return reduced by any rebate (within the meaning of subsection (h) of section one thousand eighty-one of this article). The excess under the preceding sentence shall be determined without regard to items to which subsection (k-1) of this section applies. The commissioner may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(2) The amount of the understatement under paragraph one of this subsection shall be reduced by that portion of the understatement which is attributable to (A) the tax treatment of any item by the taxpayer if

there is or was substantial authority for such treatment, or (B) any item if the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

(3)(A) Subparagraph (B) of paragraph two of this subsection shall not apply to any item attributable to a tax shelter.

(B) For purposes of this paragraph, the term "tax shelter" means

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of tax.

* NB Effective until July 1, 2029

* (k) Substantial understatement of liability.--If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return reduced by any rebate (within the meaning of subsection (h) of section one thousand eighty-one). The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

* NB Effective July 1, 2029

* (k-1) Reportable transaction understatement.-- (1) If a taxpayer has

a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to twenty percent of the amount of such understatement.

(2) For purposes of this section, the term "reportable transaction understatement" means the sum of

(A) the product of--

(i) the amount of the increase (if any) in the applicable tax base which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

(ii) the highest rate of tax imposed under the article of this chapter that applies to the taxpayer, and

(B) the amount of the decrease (if any) in the aggregate amount of credits determined under the article of this chapter that applies to the taxpayer which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A) of this paragraph, any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section one thousand two hundred eleven of the internal revenue code) be allowed for such year, shall be treated as an increase in the applicable tax base.

(3) This subsection shall apply to any item which is attributable to--

(A) any listed transaction, and

(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of tax.

(4) Paragraph one of this subsection shall be applied by substituting "thirty percent" for "twenty percent" with respect to the portion of any reportable transaction understatement with respect to which the requirement of clause (i) of subparagraph (B) of paragraph ten of this subsection is not met.

(5) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" have the meanings given to such terms by section twenty-five of this chapter, the term "reportable

transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(6) In the case of an understatement (as defined in subsection (k) of this section)

(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under subsection (k) of this section, and (B) the addition to tax under subsection (k) of this section shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) of this paragraph over the aggregate amount of reportable transaction understatements.

(7) References to an understatement (or a deficiency) in subsection (f) of this section shall be treated as including references to a reportable transaction understatement.

(8) This subsection shall not apply to any portion of any understatement on which a penalty is imposed under subsection (f) of this section.

(9) Except as provided in regulations prescribed by the commissioner, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the commissioner regarding the examination of the return or such other date as is specified by the commissioner.

(10)(A) No penalty shall be imposed under this subsection with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(B) Subparagraph (A) of this paragraph shall not apply to any reportable transaction understatement unless:

(i) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with section twenty-five of this chapter,

(ii) there is or was substantial authority for such treatment, and
(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section twenty-five of this chapter shall be treated as meeting the requirements of clause (i) of this subparagraph if the penalty for such failure was rescinded under subsection (p) of this section.

(11)(A) A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief

(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

(B)(i) An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if

(I) the tax advisor is described in clause (ii) of this subparagraph, or

(II) the opinion is described in clause (iii) of this subparagraph.

(ii) A tax advisor is described in this clause if the tax advisor:

(I) is a material advisor (within the meaning of section six thousand one hundred eleven of the internal revenue code or within such meaning as it also applies to a New York reportable transaction as defined in section twenty-five of this chapter) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of subsection (b) of section two hundred sixty-seven of the internal revenue code or subsection (b) of section seven hundred seven of the internal revenue code) to any person who so participates,

(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

(IV) has a disqualifying financial interest with respect to the transaction.

(iii) For purposes of clause (i) of this subparagraph, an opinion is disqualified if the opinion

(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

(III) does not identify and consider all relevant facts, or

(IV) fails to meet any other requirement as the commissioner may prescribe.

* NB Repealed July 1, 2029

(k-2) No penalty will be imposed pursuant to subsection (c) or (k) of this section for a taxable year beginning on or after January first, two thousand eight and before January first, two thousand nine resulting from the denial of an empire zone tax credit claimed by the taxpayer because an empire zone retention certificate was not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis for the tax credit or credits claimed on the return or report.

(l) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents.--(1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under article nine, nine-A, nine-B or nine-C of this chapter of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(2) For purposes of paragraph one of this subsection, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision,

or control.

(3) For purposes of paragraph one of this subsection, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

(n) Failure to file report of information relating to certain interest payments.--In case of failure to file the report of information required under subdivision two-a of section two hundred eleven, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax a penalty of five hundred dollars.

* (p) Failure to disclose or provide reportable transaction information. -- (1) Any person who fails to file, disclose or provide any statement, return or other document which is required under subdivision (a) of section twenty-five of this chapter shall pay a penalty in the amount determined under paragraph two of this subsection.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the amount of the penalty under paragraph one of this subsection shall be twenty thousand dollars.

(B) The amount of the penalty under paragraph one of this subsection with respect to a listed transaction shall be fifty thousand dollars.

(3) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" shall have the same meanings as used in section twenty-five of this chapter, the term "reportable transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(4) The commissioner may rescind all or any portion of any penalty imposed by this subsection with respect to any violation if

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this chapter and effective tax administration.

(5) The penalty imposed by this section shall be in addition to any

other penalty imposed by this chapter.

* NB Repealed July 1, 2029

* (q) Failure to disclose or provide reportable transaction return.--

(1) Any person who fails to file, disclose or provide any statement, return or other document which is required under subdivision (b) of section twenty-five of this chapter shall pay a penalty in the amount determined under paragraph two of this subsection.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the amount of the penalty under paragraph one of this subsection shall be twenty thousand dollars.

(B) The amount of the penalty under paragraph one of this subsection with respect to a listed transaction shall be the greater of

(i) fifty thousand dollars or,

(ii) fifty percent of the gross income that the organizer or material advisor derived with respect to activities that were the basis for the requirement to file, disclose or provide information pursuant to section six thousand eleven of the internal revenue code, to the extent such gross income is attributable to the avoidance of any tax imposed under article nine, nine-A or thirty-three of this chapter.

(C) Clause (ii) of subparagraph (B) of this paragraph shall be applied by substituting "seventy-five percent" for "fifty percent" in the case of an intentional failure or act described in paragraph one of this subsection.

(3) For purposes of this subsection, the terms "reportable transaction" and "listed transaction" shall have the same meanings as used in section twenty-five of this chapter, the term "reportable transaction" shall include a "New York reportable transaction" as defined in such section twenty-five, and the term "listed transaction" shall include any transaction designated as a tax avoidance transaction pursuant to such section twenty-five.

(4) The commissioner may rescind all or any portion of any penalty imposed by this subsection with respect to any violation if

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this chapter and effective tax administration.

(5) The penalty imposed by this subsection shall be in addition to any

other penalty imposed by this chapter, except that no penalty shall be imposed under subparagraph (A) or clause (i) of subparagraph (B) of paragraph two of subsection (y) of section six hundred eighty-five of this chapter for the same failure that is the basis for a penalty under this subsection. Nothing in this paragraph shall preclude the imposition of a penalty under clause (ii) of subparagraph (B) of paragraph two of subsection (y) of section six hundred eighty-five of this chapter for the same failure that is the basis for a penalty under clause (ii) of subparagraph (B) of paragraph two of this subsection.

* NB Repealed July 1, 2029

* (r) Failure to maintain list of advisees.-- (1) If any person who is required to maintain a list under subdivision (c) of section twenty-five of this chapter fails to make a duplicate of such list available upon written request by the commissioner in accordance with such subdivision within twenty business days after the date of such request, such person shall pay a penalty of ten thousand dollars for each day of such failure after such twentieth day.

(2) No penalty shall be imposed by paragraph one of this subsection with respect to the failure on any day if such failure is due to reasonable cause.

* NB Repealed July 1, 2029

* (s) Tax preparer penalty.-- (1) If:

(A) any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a reasonable belief that the tax treatment in that position was more likely than not the proper treatment,

(B) any person who is a tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and

(C) such position was not disclosed as provided in subsection (k) of this section or there was no reasonable basis for the tax treatment of that position, such person shall pay a penalty of up to one thousand dollars with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith.

(2) If any part of any understatement of liability with respect to any return or claim for refund is due

(A) to a willful attempt in any manner to understate the liability for tax by a person who is a tax return preparer with respect to such return or claim, or

(B) to any reckless or intentional disregard of rules or regulations by any such person, such person shall pay a penalty of up to five thousand dollars with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this paragraph shall be reduced by the amount of the penalty paid by such person by reason of paragraph one of this subsection.

(3) For purposes of this subsection, the term "understatement of liability" means any understatement of the net amount payable with respect to any tax imposed under article nine, nine-A or thirty-three of this chapter or any overstatement of the net amount creditable or refundable with respect to any such tax.

(4) This subsection shall not apply if the penalty under subsection (1) of this section is imposed on the tax return preparer with respect to such understatement.

* NB Repealed July 1, 2029

* (t) Promoting abusive tax shelters.-- (1) Any person who

(A)(i) organizes (or assists in the organization of)

(I) a partnership or other entity,

(II) any investment plan or arrangement, or

(III) any other plan or arrangement, or

(ii) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in clause (i) of this subparagraph, and

(B) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)

(i) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(ii) a gross valuation overstatement as to any material matter, and

(C) satisfies any of the following conditions

(i) the person is organized in this state,

(ii) the person is doing business in this state,

(iii) the person is deriving income in this state, or

(iv) the person conducts any of the activities described in subparagraph (A) or (B) of this paragraph within the state of New York, shall pay, with respect to each activity described in subparagraph (A) of this paragraph, a penalty equal to one thousand dollars or, if the person establishes that it is lesser, one hundred percent of the gross income derived (or to be derived) by such person from such activity to the extent such gross income is attributed to the avoidance of any tax imposed under articles nine, nine-A or thirty-three of this chapter; provided, however, that if an activity with respect to which a penalty imposed under this subsection involves a statement described in clause (i) of subparagraph (B) of paragraph one of this subsection, the penalty shall be equal to fifty percent of the gross income derived (or to be derived) from that activity within the state by the person on which the penalty is imposed. For purposes of the preceding sentence, activities described in clause (i) of subparagraph (A) of this paragraph with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in clause (ii) of subparagraph (A) of this paragraph shall be so treated.

(2)(A) For purposes of this subsection, the term "gross valuation overstatement" means any statement as to the value of any property or services if--

(i) the value so stated exceeds two hundred percent of the amount determined to be the correct valuation, and

(ii) the value of such property or services is directly related to the amount of any deduction or credit allowable under this chapter to any participant.

(B) The commissioner may waive all or any part of the penalty provided by paragraph one of this subsection with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that such valuation was made in good faith.

(3) The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

* NB Repealed July 1, 2029

(u) False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department will be subject to a penalty of one hundred dollars per document submitted, or five hundred

dollars per tax return submitted. This penalty will be in addition to any other penalty or addition provided by law.

(v) Failure to supply all the information required or to provide correct information in secretary of state statements. Unless it is shown that such failure to provide the statement and information required by section four hundred eight of the business corporation law is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the taxpayer failing to supply complete and correct information, a penalty of two hundred fifty dollars per corporation required to provide such information.

§ 1086. Overpayment.--- (a) General.--The commissioner of taxation and finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by the tax law on the taxpayer who made the overpayment, or against any liability for a past-due legally enforceable debt of which he is notified pursuant to section one hundred seventy-one-f of this chapter, or against any city of New York tax warrant judgment debt of which he is notified pursuant to section one hundred seventy-one-l of this chapter, and the balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Provided, however, in the case of an overpayment claimed on a return or report, such refund shall be made only if application therefor is made on such return or report. In the absence of such application, the amount of such overpayment with respect to any taxable year shall be credited against, and considered as, a payment of tax liability with respect to such tax for the succeeding taxable year and shall be credited against the estimated tax, if any, for such year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year). The commissioner shall notify the taxpayer that such overpayment has been so credited, and the taxpayer may, prior to the due date (without regard to extensions) of the taxpayer's return or report for such succeeding taxable year, claim a refund of such overpayment. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the

commissioner approved by the comptroller. The comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the taxpayer who made the overpayment and other information and data available in the files of the commissioner.

(b) Credits against estimated tax.---The commissioner may prescribe regulations providing for the crediting against the estimated tax under article nine-a for any taxable year of the amount determined to be an overpayment of tax under such article for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax under article nine-a of this chapter for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises, except upon request to the commissioner on or before the last day prescribed for the filing of the return for the succeeding taxable year, determined with regard to any extension of time granted. If good cause is shown for reversing the credit, the commissioner may, in his or her discretion, credit the overpayment against a liability or refund the overpayment without interest. Provided, the person who made the overpayment will not be relieved of liability for any penalty imposed for a consequent underpayment of estimated tax for the succeeding taxable year. The decision of the commissioner to grant or deny the request is final and not subject to further administrative or judicial review.

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

(d) Assessment and collection after limitation period.---If any amount of tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(e) Assignment of overpayment.---A credit for an overpayment of tax under article nine, nine-a, nine-b or nine-c may be assigned by the taxpayer to a corporation liable to pay taxes under any of such articles, and the assignee of the whole or any part of such credit, on

filing such assignment with the tax commission, shall thereupon be entitled to credit upon the books of the tax commission for the amount thereof on its current account for taxes, in the same manner and to the same effect as though the credit had originally been allowed in its favor.

§ 1087. Limitations on credit or refund.--(a) General.--Claim for credit or refund of an overpayment of tax under article nine or nine-A shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii) two years from the time the tax was paid or (iii) in the case of any overpayment arising from an erroneous denial by the department of environmental conservation of a certification of completion pursuant to section 27-1419 of the environmental conservation law, two years from the time a final determination to the effect that such denial was erroneous is made and is no longer subject to judicial review, whichever of such periods expires the latest, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. In the case of a claim for credit or refund filed within the period prescribed in paragraph (iii) of this subsection, the amount of the credit or refund may exceed the portion of the tax paid within the applicable period specified in the two immediately preceding sentences, but only to the extent of the amount of the overpayment attributable to the denial described in such paragraph (iii). Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed. For special restriction in a proceeding on a claim for refund of tax paid pursuant to an assessment made as a result of (i) a net operating loss carryback or capital loss carryback, or (ii) an increase or decrease in

federal taxable income or federal tax, or (iii) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (7) of subsection (c) of section one thousand eighty-three.

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

(c) Notice of change or correction of federal income.-- If a taxpayer is required by subdivision three of section two hundred eleven or paragraph one of subdivision (e) of section fifteen hundred fifteen of this chapter, to file a report or amended return in respect of (i) a decrease or increase in federal taxable income or federal alternative minimum taxable income or federal tax, or (ii) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were an overpayment for federal income tax purposes, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner. If the report or amended return required by any such provision of law is not filed within the period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal change or correction. The amount of such credit or refund--

(1) shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment)

was based, and

(2) shall not exceed the amount of the reduction in tax attributable to such decrease or increase in federal taxable income, federal alternative minimum taxable income, or federal tax or to such federal change or correction or renegotiation, or computation or recomputation of tax. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

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

(e) Failure to file claim within prescribed period.--No credit or refund shall be allowed or made, except as provided in subsection (f) of this section or subsection (d) of section one thousand ninety, after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under article nine, nine-a, nine-b or nine-c.

(f) effect of petition to tax commission.--If a notice of deficiency for a taxable year has been mailed to the taxpayer under section one thousand eighty-one and if the taxpayer files a timely petition with the

tax commission under section one thousand eighty-nine, it may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except--

(1) as to overpayments determined by a decision of the tax commission which has become final; and

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the tax commission which has become final; and

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

(4) as to any amount claimed as a result of a change or correction described in subsection (c).

(g) Limit on amount of credit or refund.--The amount of overpayment determined under subsection (f) shall, when the decision of the tax commission has become final, be credited or refunded in accordance with subsection (a) of section one thousand eighty-six and shall not exceed the amount of tax which the tax commission determines as part of its decision was paid--

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

(2) within the period which would be applicable under subsections (a), (b) or (c), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the tax commission finds that there is an overpayment.

For special restriction on credit or refund in a proceeding on a petition for redetermination of a deficiency where the notice of deficiency is issued as a result of (i) a net operating loss carryback or a capital loss carryback, or (ii) an increase or decrease in federal taxable income or federal tax, or (iii) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (7) of subsection (c) of section one thousand eighty-three.

(h) Early return.--For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be

considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) Prepaid tax.--For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment (including any amount paid by the taxpayer as estimated tax for a taxable year) shall be deemed to have been paid by it on the fifteenth day of the third month following the close of the taxable year the income of which is the basis for tax under article nine-a, or on the last day prescribed in article nine for the filing of a final return for such taxable year, or portion thereof, determined in all cases without regard to any extension of time granted the taxpayer, for taxable years beginning before January first, two thousand sixteen, and on the fifteenth day of the fourth month following the close of the taxable year the income of which is the basis for tax under article nine-a, or on the last day prescribed in article nine for the filing of a final return for such taxable year, or portion thereof, determined in all cases without regard to any extension of time granted the taxpayer, for taxable years beginning on or after January first, two thousand sixteen.

(j) Cross reference.--For provision barring refund of overpayment credited against tax of a succeeding year, except for good cause shown, see subsection (b) of section one thousand eighty-six.

§ 1088. Interest on overpayment.--(a) General.--Notwithstanding the provisions of section sixteen of the state finance law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six, or if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by article nine or nine-a:

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

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

claim any additional overpayment and interest thereon.

(3) Late and amended returns and claims for credit or refund.

Notwithstanding paragraph one or two of this subsection, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an amended return of tax or claimed on a claim for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(4) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of taxation and finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph three of this subsection with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall not be construed as limiting or mitigating the effect of any statute of limitations or any other provision of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund on an overpayment.

(5) Amounts of less than five dollars. No interest shall be allowed or paid if the amount thereof is less than five dollars.

(b) Advance payment of tax and estimated tax.--The provisions of subsections (h) and (i) of section one thousand eighty-seven applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Tax refund within three months of claim for overpayment. (1) If any overpayment of tax imposed by article nine or nine-a is credited or refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within three months after such return was filed, whichever is later, or within three months after an

amended return was filed claiming such overpayment or within three months after a claim for credit or refund was filed on which such overpayment was claimed, no interest shall be allowed under this section on any such overpayment. For purposes of this subsection, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year or period shall be considered as filed on such last day.

(2) In the case of an overpayment of tax credited due to absence of application by the taxpayer for refund under subsection (a) of section one thousand eighty-six, where the commissioner notifies the taxpayer that such overpayment has been so credited within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within three months after such return was filed, whichever is later, and where the taxpayer subsequent to such notice makes a claim for refund of all or part of such overpayment, no interest shall be allowed under this section prior to the date of such claim for refund.

(d) Refund of tax caused by carryback.--For purposes of this section, if any overpayment of tax imposed by article nine-a results from a carryback of a net operating loss or a net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises. In the case of a taxpayer which has made an election under subchapter s of chapter one of the internal revenue code, where an overpayment of tax results from a carryback of a net operating loss arising in a taxable year ending on or after December thirty-first, nineteen hundred seventy-six, or from a carryback of a net capital loss arising in a taxable year ending on or after December thirty-first, nineteen hundred eighty-one, unless a claim for refund based on such overpayment has been filed within a period ending twelve months and one hundred eighty days subsequent to the last day of the taxable year in which the net operating loss or net capital loss arises, interest on any resulting refund or credit shall cease to accrue upon the conclusion of such period. Such filing date shall be determined without regard to extensions of time to file. For purposes of subsection (c) of this section any overpayment described herein shall be treated as an

overpayment for the loss year and such subsection shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

(e) No interest until return in processible form.--

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

(2) For purposes of paragraph one of this subsection, a return is in a processible form if--

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

(B) such return contains--

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

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

(f) Overpayment credited against past-due legally enforceable debts.--If interest is payable pursuant to this section on that portion of an overpayment which is certified by the commissioner of taxation and finance to the comptroller as the amount to be credited against a past-due legally enforceable debt pursuant to the provisions of section one hundred seventy-one-f of this chapter, or a city of New York tax warrant judgment debt pursuant to the provisions of section one hundred seventy-one-l of this chapter, such portion of such an overpayment shall cease to bear interest on the date of such certification.

(g) Cross-reference.--For provision with respect to interest after failure to file a report or amended return under subdivision three of section two hundred eleven or paragraph one of subdivision (e) of section fifteen hundred fifteen, see subsection (c) of section one thousand eighty-seven.

(h) Notwithstanding any other provision in this section, for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine, interest will be allowed on an overpayment on any return or report on which one or more empire zone tax credits are claimed, only from the one hundred eightieth day after the taxpayer files with the department an empire zone retention certificate issued pursuant to subdivision (w) of section nine hundred fifty-nine of

the general municipal law to the empire zone enterprise which is the basis for the tax credit or credits claimed on the return or report.

§ 1089. Petition to tax commission.--(a) General.--The form of a petition to the tax commission, and further proceedings before the tax commission in any case initiated by the filing of a petition, shall be governed by such rules as the tax commission shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by one or more members of the tax commission, or by a hearing officer designated by the tax commission to take evidence and report to the tax commission. The tax commissioners shall, acting as a body, jointly decide the case as quickly as practicable. Notice of decision shall be mailed promptly to the taxpayer by certified or registered mail at its last known address, and such notice shall set forth the tax commission's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer.

(b) Petition for redetermination of a deficiency.--Within ninety days, or one hundred fifty days if the notice is addressed to a taxpayer whose last known address is outside of the United States, after the mailing of the notice of deficiency authorized by section one thousand eighty-one, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subsection (g) of section one thousand eighty-seven. For special restriction where the notice of deficiency relates to a proposed assessment made as a result of (i) a net operating loss carryback or capital loss carryback, (ii) an increase or decrease in federal taxable income or federal tax, or (iii) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (7) of subsection (c) of section one thousand eighty-three.

(c) Petition for refund.--A taxpayer may file a petition with the tax commission for the amounts asserted in a claim for refund if---

(1) the taxpayer has filed a timely claim for refund with the tax

commission,

(2) the taxpayer has not previously filed with the tax commission a timely petition under subsection (b) of this section for the same taxable year unless the petition under this subsection relates to a separate claim for credit or refund properly filed under subsection (f) of section one thousand eighty-seven of this article or relates to a refund or credit first claimed on an amended return for the taxable year, and

(3) either (A) six months have expired since the claim was filed, or (B) the tax commission has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part.

(4) Notwithstanding paragraph three of this subsection, no petition may be filed by a taxpayer claiming a refund of one or more empire zone tax credits for a taxable year beginning on or after January first, two thousand eight and before January first, two thousand nine, until six months have expired after the date on which an empire zone retention certificate was issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis for the tax credit or credits claimed on the return or report.

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

(d) Assertion of deficiency after filing petition.---

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

(2) Petition for refund.---If the taxpayer files with the tax commission a petition for credit or refund for a taxable year, the tax commission may

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax commission, and within the period in which an assessment would be timely under section one thousand eighty-three, or

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

(3) Opportunity to respond.--- A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the tax commission under this subsection.

(4) Restriction on further notices of deficiency.---If the taxpayer files a petition with the tax commission under this section, no notice of deficiency under section one thousand eighty-one of this article may thereafter be issued by the tax commission for the same tax return, except in case of fraud or with respect to an increase or decrease in federal taxable income or federal alternative minimum taxable income or federal tax or a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, required to be reported under subdivision three of section two hundred eleven of this chapter.

(e) Burden of proof.---In any case before the tax commission under this article, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the tax commission:

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

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

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of an increase or decrease in federal

taxable income or federal alternative minimum taxable income or federal tax or a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, required to be reported under subdivision three of section two hundred eleven, or under section two hundred nineteen-bb, or under section two hundred nineteen-zz, and of which increase, decrease, change or correction or renegotiation, or computation or recomputation, the tax commission had no notice at the time it mailed the notice of deficiency; and

(4) whether any person is liable for a penalty under subsection (l) of section one thousand eighty-five.

(f) Evidence of related federal determination.---Evidence of a federal determination relating to issues raised in a case before the tax commission under this section shall be admissible, under rules established by the tax commission.

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

§ 1090. Review of tax commission decision.---(a) General.--- A decision of the tax appeals tribunal shall be subject to judicial review in the manner provided for by section two thousand sixteen of this chapter. Provided, however, an application by a taxpayer for judicial review of a decision of the tax appeals tribunal that there is a deficiency of tax under section one hundred eighty-two of this chapter, or liability for any interest, addition to tax or penalty with respect to such deficiency, shall not be instituted unless the amount of such deficiency of tax and such interest, addition to tax or penalty are paid at or before the time such application for review is made or such amounts are deposited with the commissioner of taxation and finance at or before such time.

(b) Judicial review exclusive remedy of taxpayer.---The review of a decision of the tax commission provided by this section shall be the exclusive remedy available to any taxpayer for the judicial

determination of the liability of the taxpayer for the taxes imposed by article nine, nine-a, nine-b or nine-c.

(c) Assessment pending review; review bond.---Irrespective of any restrictions on the assessment and collection of deficiencies, the tax commission may assess a deficiency after the expiration of the period specified in subsection (a), notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer unless the taxpayer, at or before the time the taxpayer's application for review is made, has paid the deficiency, has deposited with the tax commission the amount of the deficiency, or has filed with the tax commission a bond (which may be a jeopardy bond under subsection (h) of section one thousand ninety-four) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency (including interest and other amounts) as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the tax commission is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced. Provided, however, where the tax commission has rendered a decision that there is a deficiency of tax under section one hundred eighty-two of this chapter, or liability for any interest, addition to tax or penalty with respect to such deficiency, irrespective of any restrictions on the assessment and collection of deficiencies, the tax commission may assess such deficiency after the expiration of the period specified in subsection (a), notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer.

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

(e) Date of finality of division of tax appeals determination or

decision.--- A determination of an administrative law judge in the division of tax appeals shall become final in accordance with subdivision four of section two thousand ten of this chapter. A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in subsection (a) for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of such decision is served as provided in section two thousand sixteen of this chapter.

§ 1091. Mailing rules; holidays; miscellaneous.--(a) Timely mailing.--(1) If any return, declaration of estimated tax, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article, or of article nine, nine-a, nine-b or nine-c, is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom

addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subsection shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the tax commission.

(2)(A) Any reference in paragraph one of this subsection to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph one of this subsection to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner finds that any delivery service designated by such secretary is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this article, or may withdraw any such designation if the commissioner finds that a delivery service so designated is inadequate for the needs of the state. Any reference in paragraph one of this subsection to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner and any reference in paragraph one of this subsection to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subsection. If the commissioner finds that any equivalent of registered or certified mail designated by such secretary or the commissioner is inadequate for the needs of the state, the commissioner may withdraw

such designation for purposes of this article.

(b) Last known address.--For purposes of this article, a taxpayer's last known address shall be the address given in the last return filed by it, unless subsequently to the filing of such return the taxpayer shall have notified the tax commission of a change of address.

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

(d) Certificate; unfiled return.--For purposes of this chapter, the certificate of the tax commission to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this article or of article nine, nine-a, nine-b or nine-c of this chapter, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied.

(e) Attorney general; jurisdiction.--The attorney general shall have concurrent jurisdiction with any district attorney in the prosecution of any offenses arising under article thirty-seven of this chapter with respect to the taxes to which this article applies.

§ 1092. Collection, levy and liens.---(a) Collection procedures.---The taxes imposed by articles nine, nine-a, nine-b or nine-c shall be collected by the tax commission, and it may establish the mode or time for the collection of any amount due it under these articles if not otherwise specified. The tax commission shall, upon request, give a receipt for any sum collected under such articles. The tax commission may authorize banks or trust companies which are depositaries or financial agents of the state to receive and give a receipt for any tax imposed under such articles in such manner, at such times, and under such conditions as the tax commission may prescribe; and the tax commission shall prescribe the manner, times and conditions under which

the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the tax commission.

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

(c) Issuance of warrant after notice and demand.---If any corporation or other person liable under articles nine or nine-a for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within twenty-one calendar days after notice and demand therefor is given to such corporation or other person under subsection (b) of this section (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), the commissioner may within six years after the date of such assessment issue a warrant under the commissioner's official seal directed to the sheriff of any county of the state, or to any officer or employee of the department, commanding him to levy upon and sell the real and personal property of such corporation or other person for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner and upon failure or refusal to pay such tax or other amount the commissioner may issue a warrant without regard to the twenty-one day period (or ten-day period if applicable) provided in this subsection. For purposes of this subsection, the term corporation shall include an exempt QSSS of such corporation.

(d) Copy of warrant to be filed and lien to be created.---Any sheriff or officer or employee who receives a warrant under subsection (c) shall

within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a lien upon the title to and interest in real, personal and other property of the taxpayer. Such lien shall not apply to personal property unless such warrant is filed in the department of state. For purposes of this subsection, the term taxpayer shall include an exempt QSSS of such taxpayer.

(e) Judgment.---When a warrant has been filed with the county clerk the tax commission shall, in the right of the people of the state of New York, be deemed to have obtained judgment against the taxpayer for the tax or other amounts. For purposes of this subsection, the term taxpayer shall include an exempt QSSS of such taxpayer.

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

(g) Foreign corporations.---Where a notice and demand under subsection (b) shall have been given to a foreign corporation or other person who is not then a resident, and it appears to the tax commission that it is not practicable to find in this state property of such foreign corporation or nonresident person sufficient to pay the entire balance of tax or other amount owing by such foreign corporation or nonresident person, the tax commission may, in accordance with subsection (c), issue a warrant directed to an officer or employee of the department of taxation and finance, a copy of which warrant shall be mailed by certified or registered mail to such foreign corporation or nonresident person at its last known address, subject to the rules for mailing

provided in subsection (a) of section one thousand eighty-one. Such warrant shall command the officer or employee to proceed in Albany county, and he shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the tax commission may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The tax commission may also, in its discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this article or under article nine, nine-a, nine-b or nine-c, against foreign corporations or other nonresident persons, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the tax commission shall deem proper and sufficient. For purposes of this subsection, the term corporation shall include an exempt QSSS of such corporation.

(h) Action by state for recovery of taxes.---Action may be brought by the attorney general at the instance of the tax commission in the name of the state to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this article or under article nine, nine-a, nine-b or nine-c within six years prior to the date the action is commenced.

(i) Release of lien.---The tax commission, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may require, may release any property from the lien of any warrant filed under subsection (d) or (g) for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

(j) Lien from due date of return.---(1) In addition to any other lien provided for in this section, each tax imposed by article nine, nine-a, nine-b or nine-c shall become a lien on the date on which the return is required to be filed (without regard to any extension of time for filing such return), except that such tax shall become a lien not later than

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

the proceedings for the distribution of such surplus moneys. Where title to real property passes from an individual, or from a corporation owing no franchise tax, to another corporation which is in default for such tax, the lien herein provided shall not be enforceable except as to any equity after the prior mortgage or purchase money mortgage encumbrance. For purposes of this paragraph, the terms taxpayer and corporation shall include an exempt QSSS of such taxpayer or corporation.

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

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

§ 1093. Transferees.---(a) General.---The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the tax commission under this article or under article nine, nine-a, nine-b or nine-c, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term transferee includes, in case of successive transfers, donee, heir, legatee, devisee, distributee, and successor by merger, consolidation or other reorganization.

(b) Exceptions.---

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

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

of section one thousand eighty-seven on the amount of the credit or refund, the periods specified in subsection (a) of section one thousand eighty-seven shall be increased by the period from the date of such expiration to the date of the agreement.

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

(d) Evidence.---The tax commission shall use its powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subsection (e) of section one thousand eighty-nine for rule as to burden of proof.

§ 1094. Jeopardy assessment.---(a) Authority for making.---If the tax commission believes that the assessment or collection of a deficiency will be jeopardized by delay, it shall, notwithstanding the provisions of section one thousand eighty-one, immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the tax commission for the payment thereof.

(b) Notice of deficiency.---If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section one thousand eighty-one, then the tax commission shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of tax commission.---The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the tax commission. The tax commission may, at any time before rendering its decision, abate such assessment, or any unpaid portion thereof, to the extent that it believes the assessment to be excessive in amount. The tax commission may in its decision redetermine the entire amount of the

deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of tax commission.--- If the jeopardy assessment is made after the decision of the tax commission is rendered, such assessment may be made only in respect of the deficiency determined by the tax commission in its decision.

(e) Expiration of right to assess.---A jeopardy assessment may not be made after the decision of the tax commission has become final or after the taxpayer has made an application for review of the decision of the tax commission.

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

(g) Abatement if jeopardy does not exist.---The tax commission may abate the jeopardy assessment if it finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax commission in respect of the deficiency has been rendered or, if no petition is filed with the tax commission, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection.---The collection of the whole or any

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

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

(j) Stay of sale of seized property pending tax commission decision.---Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold---

(1) if subsection (b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section one thousand eighty-nine for filing a petition with the tax commission,

and

(2) if a petition is filed with the tax commission (whether before or after the making of such jeopardy assessment), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subsection (a) were not applicable.

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

(k) Interest.---For the purpose of subsection (a) of section one thousand eighty-four, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year.---If the tax commission finds that a taxpayer designs quickly to remove its property from this state, or to conceal its property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the current or the preceding taxable year unless such proceedings be brought without delay, the tax commission shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subsection, the finding of the tax commission made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period.---Notwithstanding the termination of the taxable period of the taxpayer by the tax commission, as provided in subsection (l), the tax commission may reopen such taxable period each time the taxpayer is found by the tax commission to have received income, within the current taxable year, since the termination of such

period. A taxable period so terminated by the tax commission may be reopened by the taxpayer if it files with the tax commission a true and accurate return under article nine, nine-a, nine-b or nine-c for such taxable period, together with such other information as the tax commission may by regulations prescribe.

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

§ 1095. Criminal penalties; cross-reference.---For criminal penalties, see article thirty-seven of this chapter.

§ 1096. General powers of tax commission.---(a) General.---The tax commission shall administer and enforce the tax imposed by article nine, nine-a, nine-b and nine-c, and it is authorized to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of such articles and of this article.

(b) Examination of books and witnesses.---(1) The tax commission for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax liability of any corporation, shall have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the corporation rendering the return through any officer or employee of such corporation, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

(2) The commissioner may take any action under paragraph one of this subdivision to inquire into the commission of an offense connected with

the administration or enforcement of this article or article nine, nine-A, thirteen, thirteen-A or thirty-three of this chapter, provided, however, that notwithstanding the provisions of section one hundred seventy-four of this chapter no such action shall be taken when a referral by the department or the commissioner to the attorney general, a district attorney or any other prosecutorial agency is in effect. Provided, however, the commissioner shall have power, during the period when such referral is in effect, to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, where such books, papers, records or memoranda are in its possession, or where such books, papers, records or memoranda are in the possession of the attorney general, district attorney or other prosecutorial agency to which such referral is made.

(c) Abatement authority.---The tax commission, of its own motion, may abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, if the tax commission determines under uniform rules prescribed by it that the administration and collection costs involved would not warrant collection of the amount due. It may also abate, of its own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subsection shall be filed by a taxpayer.

(d) Special refund authority.---Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article or of article nine, nine-a, nine-b or nine-c, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller.

(e) (1) Authority to set interest rates.---The commissioner shall set the overpayment and underpayment rates of interest to be paid pursuant

to sections two hundred thirteen, two hundred thirteen-b, two hundred fifty-eight, two hundred sixty-three, two hundred ninety-four, one thousand eighty-four, one thousand eighty-five and one thousand eighty-eight of this chapter, but if no such rate or rates of interest are set, such overpayment rate shall be deemed to be set at six percent per annum and such underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such overpayment and underpayment rates shall be the rates prescribed in paragraph two of this subsection, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(2) General rule. (A) Overpayment rate. The overpayment rate set under this subsection shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subsection, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate set under this subsection shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subsection, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subsection:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred

eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the overpayment and underpayment rates for the month of September, nineteen hundred eighty-nine.

(4) In computing the amount of any interest required to be paid under this article by the commissioner of taxation and finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subsection (c) of section one thousand eighty-five of this article.

(5) Publication of interest rates. The commissioner of taxation and finance shall publish the interest rates set under this subsection on the website of the department of taxation and finance. Immediately following such publication, the commissioner shall cause such interest rates to be published in the section for miscellaneous notices in the state register and give other appropriate general notice of such interest rates. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(6) Cross-reference. For provisions relating to the power of the commissioner of taxation and finance to abate small amounts of interest, see subsection (c) of this section.

§ 1097. Disposition of revenue.---All revenue collected or received by the tax commission under this article shall be deposited and disposed of in accordance with the provisions of the article of the tax law imposing the tax to which the revenue relates.

ARTICLE 28

SALES AND COMPENSATING USE TAXES

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Section 1101. Definitions.

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PART V

FEE ON PAGING DEVICES

- Section 1150. Special fee on paging devices.

PART I -- DEFINITIONS

§ 1101. Definitions. (a) When used in this article the term "person" includes an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

(1) Purchase at retail. A purchase by any person for any purpose other than those set forth in clauses (A) and (B) of subparagraph (i) of

paragraph (4) of this subdivision.

(2) Purchaser. A person who purchases property or to whom are rendered services, the receipts from which are taxable under this article, including a mobile telecommunications customer.

(3) Receipt. (i) The amount of the sale price of any property and the charge for any service taxable under this article, including gas and gas service and electricity and electric service of whatever nature, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery, and, with respect to gas and gas service and electricity and electric service, any charges by the vendor for transportation, transmission or distribution, regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. For special rules governing computation of receipts, see section eleven hundred eleven of this article.

(ii) Receipt shall include consideration received by the vendor from third parties if:

(A) The vendor receives consideration from a third party and the consideration is directly related to a rebate, discount or similar price reduction on the sale;

(B) The vendor has an obligation to pass such consideration through to the purchaser in the form of a rebate, discount or similar price reduction;

(C) The amount of the consideration to be paid by the third party is fixed and determinable by the vendor at the time of the sale of the property or service to the purchaser; and

(D) One of the following criteria is met:

(I) the purchaser presents a coupon, certificate or other documentation to the vendor to claim a rebate, discount or similar price reduction where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the

third party shall reimburse any vendor to whom the coupon, certificate or documentation is presented;

(II) the purchaser presents identification as a member of a group or organization entitled to a rebate, discount or similar price reduction; or

(III) the rebate, discount or similar price reduction is identified as a third party rebate, discount or similar price reduction on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(iii) Subparagraph (ii) of this paragraph shall not apply to rebates, discounts or similar price reductions that are reimbursed by a third party on sales of motor vehicles.

(iv) For the purposes of subclause (II) of clause (D) of subparagraph (ii) of this paragraph, "identification as a member of a group or organization entitled to a rebate, discount or similar price reduction" shall not include the presentation of a customer loyalty or related rewards program card.

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. Notwithstanding the preceding provisions of this subparagraph, a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed, except that a sale of a new mobile home to a contractor, subcontractor or repairman who, in such capacity, installs such property is not a retail sale. Notwithstanding the preceding provisions of this

subparagraph, the purchase of a truck, trailer or tractor-trailer combination for rental or lease to an authorized carrier, as described in paragraph twenty-two of subdivision (a) of section eleven hundred fifteen, shall be deemed a retail sale.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, no motor fuel or diesel motor fuel shall be sold or used in this state without payment, and inclusion in the sales price of such motor fuel, of the tax on motor fuel required to be prepaid pursuant to the provisions of section eleven hundred two of this article except where a provision of this article relating to motor fuel or diesel motor fuel specifically provides otherwise and except in the case of a sale or use subject to tax under section eleven hundred five or eleven hundred ten, respectively, of this article. Provided, however, except for such requirement of prepayment of tax required by section eleven hundred two of this article, the provisions of this subparagraph shall not otherwise modify the meaning of the term "retail sale" as used in this article. For purposes of this subparagraph and sections eleven hundred two, eleven hundred eleven, eleven hundred twenty, eleven hundred thirty-two, eleven hundred thirty-four, eleven hundred thirty-five, eleven hundred thirty-six, eleven hundred forty-two, eleven hundred forty-five and eighteen hundred seventeen of this chapter, the following terms shall have the following meanings:

(A) "Petroleum products" means diesel motor fuel as defined in subdivision fourteen of section two hundred eighty-two of this chapter, other than kerosene or propane used for residential purposes, or motor fuel as defined in subdivision two of section two hundred eighty-two of this chapter. The phrase "used for residential purposes" shall have the same meaning as it has for purposes of section eleven hundred five-A of this article.

(B) The term "distributor" shall have the same meaning as it has for purposes of article twelve-A of this chapter, excluding persons who are not required pursuant to section two hundred eighty-two-a to pay the tax imposed thereby.

(C) The term "motor fuel" means motor fuel as defined in subdivision two of section two hundred eighty-two of this chapter.

(D) The terms "filling station", "terminal" and "owner" shall have the same meaning as they have for the purposes of article twelve-A of this

chapter.

(E) The term "diesel motor fuel" means diesel motor fuel as defined in subdivision fourteen of section two hundred eighty-two of this chapter.

(F) The terms "highway diesel motor fuel" and "non-highway diesel motor fuel" shall have the same meaning as they have for purposes of article twelve-A of this chapter.

(iii) Notwithstanding the provisions of subparagraph (i) of this paragraph, no cigarettes shall be sold or used in this state without payment, and inclusion in the sales price of such cigarettes, of the tax on cigarettes required to be prepaid pursuant to the provisions of section eleven hundred three of this article except where a provision of this article relating to cigarettes specifically provides otherwise and except in the case of a sale or use subject to tax under section eleven hundred five or eleven hundred ten, respectively, of this article. Provided, however, except for such requirement of prepayment of tax required by section eleven hundred three of this article, the provisions of this subparagraph shall not otherwise modify the meaning of the term "retail sale" as used in this article. For purposes of this subparagraph and sections eleven hundred three, eleven hundred eleven, eleven hundred fifteen, eleven hundred sixteen, eleven hundred twenty-one, eleven hundred thirty-two, eleven hundred thirty-four, eleven hundred thirty-five, eleven hundred thirty-six, eleven hundred thirty-eight, eleven hundred forty-two and eleven hundred forty-five of this article and eighteen hundred seventeen of this chapter, the terms "cigarette," "agent" and "package" shall have the same meaning that they have for purposes of article twenty of this chapter.

(iv) (A) The term retail sale does not include:

(I) The transfer of tangible personal property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the law of New York or any other jurisdiction.

(II) The distribution of property by a corporation to its stockholders as a liquidating dividend.

(III) The distribution of property by a partnership to its partners in whole or partial liquidation.

(IV) The transfer of property to a corporation upon its organization in consideration for the issuance of its stock.

(V) The contribution of property to a partnership in consideration for a partnership interest therein.

(B) For an exception applicable to this subparagraph, see subdivision (q) of section eleven hundred eleven of this article.

(v) Notwithstanding the provisions of subparagraph (i) of this paragraph, the following sales of tangible personal property shall be deemed to be retail sales: (A) a sale to a single member limited liability company or a subsidiary for resale to its member or owner, where such single member limited liability company or subsidiary is disregarded as an entity separate from its owner for federal income tax purposes (without reference to any special rules related to the imposition of certain federal taxes), including but not limited to certain employment and excise taxes; (B) a sale to a partnership for resale to one or more of its partners; or (C) a sale to a trustee of a trust for resale to one or more beneficiaries of such trust.

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

(6) Tangible personal property. Corporeal personal property of any nature. However, except for purposes of the tax imposed by subdivision (b) of section eleven hundred five of this article, such term shall not include gas, electricity, refrigeration and steam. Such term shall also include pre-written computer software, whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser. Such term shall also include newspapers and periodicals where the vendor ships or delivers the entire edition or issue of the newspaper or periodical, with or without the advertising included in the paper edition or issue, but not including anything, other than advertising, not in such paper edition or issue, to the purchaser by means of telephony or telegraphy or other electronic media, but only where the amount of the sale price to such purchaser of such newspaper or magazine or the subscription price, in the case of a subscription to a newspaper

or periodical, including any charge by such vendor for shipping or delivery to the purchaser, is separately stated to such purchaser. However, such term shall not include a modular home that is permanently affixed to real property, provided that, if a modular home is to be removed from the realty, whether as a whole or disassembled, it and its component parts shall be tangible personal property whether it is to be sold as a whole or as pieces.

(7) Use. The exercise of any right or power over tangible personal property or over any of the services which are subject to tax under section eleven hundred ten of this article or pursuant to the authority of article twenty-nine of this chapter, by the purchaser thereof, and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of such property or of any such service subject to tax under such section eleven hundred ten or pursuant to the authority of such article twenty-nine. Without limiting the foregoing, use also shall include the distribution of only tangible personal property, such as promotional materials, or of any such service subject to tax under such section eleven hundred ten or pursuant to the authority of such article twenty-nine.

(8) Vendor. (i) The term "vendor" includes:

(A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article;

(B) A person maintaining a place of business in the state and making sales, whether at such place of business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this article;

(C) A person who solicits business either:

(I) by employees, independent contractors, agents or other representatives; or

(II) by distribution of catalogs or other advertising matter, without regard to whether such distribution is the result of regular or systematic solicitation, if such person has some additional connection with the state which satisfies the nexus requirement of the United States constitution;

and by reason thereof makes sales to persons within the state of

tangible personal property or services, the use of which is taxed by this article;

(D) A person who makes sales of tangible personal property or services, the use of which is taxed by this article, and who regularly or systematically delivers such property or services in this state by means other than the United States mail or common carrier;

(E) A person who regularly or systematically solicits business in this state by the distribution, without regard to the location from which such distribution originated, of catalogs, advertising flyers or letters, or by any other means of solicitation of business, to persons in this state and by reason thereof makes sales to persons within the state of tangible personal property, the use of which is taxed by this article, if such solicitation satisfies the nexus requirement of the United States constitution;

(F) A person making sales of tangible personal property, the use of which is taxed by this article, where such person retains an ownership interest in such property and where such property is brought into this state by the person to whom such property is sold and the person to whom such property is sold becomes or is a resident or uses such property in any manner in carrying on in this state any employment, trade, business or profession;

(G) Any other person making sales to persons within the state of tangible personal property or services, the use of which is taxed by this article, who may be authorized by the commissioner of taxation and finance to collect such tax by part IV of this article;

(H) The state of New York, any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions when such entity sells services or property of a kind ordinarily sold by private persons; and

(I) A seller of tangible personal property or services, the use of which is taxed by this article if either (I) an affiliated person that is a vendor as otherwise defined in this paragraph uses in the state trademarks, service marks, or trade names that are the same as those the seller uses; or (II) an affiliated person engages in activities in the state that inure to the benefit of the seller, in its development or maintenance of a market for its goods or services in the state, to the

extent that those activities of the affiliate are sufficient to satisfy the nexus requirement of the United States constitution. For purposes of this clause, "affiliated person" has the same meaning as in clause (B) of subparagraph (v) of this paragraph. Nothing in this clause shall be construed to narrow the scope of any other provision in this paragraph. Notwithstanding the provisions of this clause, the activities in the state of an affiliated person in providing accounting or legal services or advice to a seller, or in directing the activities of a seller, including, but not limited to, making decisions about (a) strategic planning, (b) marketing, (c) inventory, (d) staffing, (e) distribution, or (f) cash management, will not result in making the seller a vendor under this paragraph.

(ii) (A) In addition, when in the opinion of the commissioner it is necessary for the efficient administration of this article to treat any salesman, representative, peddler or canvasser as the agent of the vendor, distributor, supervisor or employer under whom he operates or from whom he obtains tangible personal property sold by him, or for whom he solicits business, the commissioner may, in his discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor or employer for the collection and payment over of the tax. An unaffiliated person providing fulfillment services to a purchaser shall not be treated as a vendor by the commissioner under this paragraph with respect to such activity. For purposes of this clause, persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons which are affiliated persons with respect to each other.

(B) A person shall be deemed a vendor of the services enumerated in paragraph nine of subdivision (c) of section eleven hundred five of this article, liable for all the obligations of a vendor, including the collection, reporting and remittance of the tax imposed under this article and possessing all the rights of a vendor including the right to an exclusion or a credit or refund of tax as provided in subdivision (e) of section eleven hundred thirty-two of this article, with respect to such services which are provided by a vendor thereof and are subject to

taxation under this article, where such person, its affiliate or agent bills, on behalf of such vendor, either (I) as part of, or as a schedule to, the statement of such person to its purchasers or (II) separately (without regard to whether or not such person has customers of its own), such enumerated services provided by such vendor. For the purpose of this paragraph, "affiliate" means an entity which directly, indirectly or constructively controls a vendor of such enumerated services or is controlled by such vendor or is under the control of, along with such vendor, a common parent. Provided, however, the provisions of this clause shall not in any way be construed to otherwise limit or remove the obligations and liabilities of any person with respect to the tax imposed by this article.

(iii) For purposes of clause (D) of subparagraph (i) of this paragraph, a person shall be presumed to be regularly or systematically delivering property or services in this state if the cumulative total number of occasions such person or his agent came into the state to deliver property or services exceeded twelve during the preceding four quarterly periods ending on the last day of February, May, August and November, unless such person can demonstrate, to the satisfaction of the commissioner, that he cannot reasonably be expected to come into the state for such purposes on more than twelve occasions during the next succeeding four quarterly periods ending on the last day of February, May, August and November.

(iv) For purposes of clause (E) of subparagraph (i) of this paragraph, a person shall be presumed to be regularly or systematically soliciting business in this state if, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, the cumulative total of such person's gross receipts from sales of property delivered in this state exceeds five hundred thousand dollars and such person made more than one hundred sales of property delivered in this state, unless such person can demonstrate, to the satisfaction of the commissioner, that he cannot reasonably be expected to have gross receipts in excess of five hundred thousand dollars or more than one hundred sales of property delivered in this state for the next succeeding four quarterly periods ending on the last day of February, May, August and November.

(v) Notwithstanding any other provision of law, the term vendor shall

not include:

(A) a person who is not otherwise a vendor who purchases fulfillment services carried on in New York by a person other than an affiliated person; or

(B) a person who is not otherwise a vendor who owns tangible personal property located on the premises of an unaffiliated person performing fulfillment services for such person.

For purposes of this subparagraph, persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons which are affiliated persons with respect to each other.

(vi) For purposes of subclause (I) of clause (C) of subparagraph (i) of this paragraph, a person making sales of tangible personal property or services taxable under this article ("seller") shall be presumed to be soliciting business through an independent contractor or other representative if the seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller, if the cumulative gross receipts from sales by the seller to customers in the state who are referred to the seller by all residents with this type of an agreement with the seller is in excess of ten thousand dollars during the preceding four quarterly periods ending on the last day of February, May, August, and November. This presumption may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in the state on behalf of the seller that would satisfy the nexus requirement of the United States constitution during the four quarterly periods in question. Nothing in this subparagraph shall be construed to narrow the scope of the terms independent contractor or other representative for purposes of subclause (I) of clause (C) of subparagraph (i) of this paragraph.

(9) Capital improvement. (i) An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and

(C) Is intended to become a permanent installation.

(ii) A mobile home shall not constitute an addition or capital improvement to real property, property or land, regardless of the nature of its installation.

(iii) Notwithstanding the provisions of subparagraph (i) of this paragraph: (A) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed as the initial finished floor covering in new construction or a new addition to or total reconstruction of existing construction shall constitute an addition or capital improvement to real property, property or land; and

(B) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed other than as described in clause (A) of this subparagraph shall not constitute an addition or capital improvement to real property, property or land.

(10) Mobile home. (i) A structure which is:

(A) A type of manufactured housing; and

(B) Not self-propelled; and

(C) Transportable in one or more sections:

(I) that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, or

(II) that may be separately towable and designed to be joined into one integral structure capable of being again separated into the sections for repeated towing; and

(D) Built on a permanent chassis, comprised of frame and wheels, that is to be connected to utilities; and

(E) Designed to be used as a permanent dwelling, with or without permanent foundation; and

(F) Used for residential or commercial purposes.

(ii) The term "mobile home" shall also include structures commonly called "double wides".

(iii) The term "mobile home" shall not include:

(A) Structures designed and constructed primarily for temporary living quarters, recreations, camping or travel; or

(B) Furniture, fixtures, furnishings, appliances, attachments or similar tangible personal property not incorporated as component parts of a mobile home at the time of manufacture.

(11) New mobile home. A mobile home which is sold for the first time at retail including all components incorporated into such mobile home at the time of manufacture and remaining unchanged at the time of the first retail sale thereof.

(12) Promotional materials. Any advertising literature, other related tangible personal property (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, prospectuses, promotional displays and Cheshire labels but does not include invoices, statements and the like. Promotional materials shall also include paper or ink furnished to a printer for use in providing the services of producing, printing or imprinting promotional materials or in producing, printing or imprinting promotional materials, where such paper and ink become a physical component part of the promotional materials and such printer sells such services or such promotional materials to the person who furnished the paper and ink to such printer.

(13) Telephone answering service. A service that consists of taking messages by telephone and transmitting such messages to the purchaser of the service or at the purchaser's direction, but not including such service if it is merely an incidental element of a different or other service purchased by the customer.

(14) Pre-written computer software. Computer software (including pre-written upgrades thereof) which is not software designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more pre-written computer software programs or pre-written portions thereof does not cause the combination to be other than pre-written computer software. Pre-written

software also includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, such person shall be deemed to be the author or creator only of such person's modifications or enhancements. Pre-written software or a pre-written portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains pre-written software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute pre-written computer software.

(15) Clothing and footwear. (i) Clothing and footwear to be worn by human beings, but not including costumes or rented formal wear, and (ii) fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which are used or consumed to make or repair such clothing (other than such costumes or rented formal wear) and which become a physical component part of such clothing, but not including such items made from pearls, precious or semi-precious stones, jewels or metals, or imitations thereof.

(16) Commercial vessel. A vessel used primarily (i) to transport persons or property, for hire, (ii) by the purchaser of the vessel to transport such person's tangible personal property in the conduct of such person's business, or (iii) for both such purposes.

(17) Commercial aircraft. Aircraft used primarily (i) to transport persons or property, for hire, (ii) by the purchaser of the aircraft to transport such person's tangible personal property in the conduct of such person's business, or (iii) for both such purposes. Transporting persons for hire does not include transporting agents, employees, officers, members, partners, managers or directors of affiliated persons. Persons are affiliated persons with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons that are affiliated persons with respect to each other. For an exception to the

exclusions from the definition of "retail sale" applicable to aircraft, see subdivision (q) of section eleven hundred eleven of this article.

18. Fulfillment services. Any of the following services performed by an entity on its premises on behalf of a purchaser:

- (i) the acceptance of orders electronically or by mail, telephone, telefax or internet;
- (ii) responses to consumer correspondence and inquiries electronically or by mail, telephone, telefax or internet;
- (iii) billing and collection activities; or
- (iv) the shipment of orders from an inventory of products offered for sale by the purchaser.

(19) Farming. The term "farming" includes agriculture, floriculture, horticulture, aquaculture and silviculture; stock, dairy, poultry, fruit, fur bearing animal, graping, truck and tree farming; ranching; operating nurseries, greenhouses, vineyard trellises or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural, floricultural or silvicultural commodities; operating orchards; raising, growing and harvesting crops, livestock and livestock products, as defined in subdivision two of section three hundred one of the agriculture and markets law; and raising, growing and harvesting woodland products, including, but not limited to, timber, logs, lumber, pulpwood, posts and firewood.

(20) Commercial horse boarding operation. "Commercial horse boarding operation" shall have the same meaning that such term has in subdivision thirteen of section three hundred one of the agriculture and markets law.

(22) (A) "Prepaid telephone calling service" means the right to exclusively purchase telecommunication services, that must be paid for in advance and enable the origination of one or more intrastate, interstate or international telephone calls using an access number (such as a toll free network access number) and/or authorization code, whether manually or electronically dialed, for which payment to a vendor must be made in advance, whether or not that right is represented by the transfer by the vendor to the purchaser of an item of tangible personal property. Such term, except with respect to the tax imposed by section

one hundred eighty-six-e of article nine of this chapter, includes a prepaid mobile calling service. In no event shall a credit card constitute a prepaid telephone calling service. If the sale or recharge of a prepaid telephone calling service does not take place at the vendor's place of business, it shall be conclusively determined to take place at the purchaser's shipping address or, if there is no item shipped, at the purchaser's billing address or the location associated with the purchaser's mobile telephone number, or, if the vendor does not have the address or the location associated with the customer's mobile telephone number, at such address, as approved by the commissioner, that reasonably reflects the customer's location at the time of the sale or recharge.

(B) "Prepaid mobile calling service" means the right to use a commercial mobile radio service, whether or not sold with other property or services, that must be paid for in advance and is sold for use over a specified period of time or in predetermined units or dollars that decline with use in a known amount, whether or not that right is represented by or includes the transfer to the purchaser of an item of tangible personal property.

(23) Qualified empire zone enterprise. The term "qualified empire zone enterprise" shall have the same meaning that such term has in section fourteen of this chapter for purposes of this article and article twenty-nine of this chapter.

(24) "Mobile telecommunications service" shall mean commercial mobile radio service. "Mobile telecommunications service" does not include prepaid telephone calling service or air-ground radio telephone service as defined in section 22.99 of title 47 of the code of federal regulations as in effect on June first, nineteen hundred ninety-nine.

(25) "Commercial mobile radio service" and "mobile service" shall have the same meanings as in section 20.3 of title 47 of the code of federal regulations in effect on June first, nineteen hundred ninety-nine, to wit:

(i) "Commercial mobile radio service." A mobile service that is:
(A)(I) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (II) an interconnected service; and (III) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (B) the

functional equivalent of such a mobile service described in clause (A) of this subparagraph.

(ii) "Mobile service." A radio communications service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: (A) both one-way and two-way radio communications services; (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (C) any service for which a license is required in a personal communications service under part 24 of title 47 of the code of federal regulations in effect on June first, nineteen hundred ninety-nine.

(26) "Place of primary use" shall mean the street address representative of where a mobile telecommunications customer's use of the mobile telecommunications service primarily occurs, and must be: (i) the residential street address or the primary business street address of the mobile telecommunications customer and (ii) within the licensed service area of the home service provider.

(27)(i) "Mobile telecommunications customer" shall mean either (A) a person or entity that contracts with a home service provider for mobile telecommunications services; or (B) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service, but this clause (B) applies only for the purpose of determining the place of primary use. "Mobile telecommunications customer" does not include either (A) a reseller of mobile telecommunications service; or (B) a serving carrier under an arrangement to serve a mobile telecommunications customer outside the home service provider's licensed service area.

(ii) "Home service provider" shall mean a facilities-based carrier or reseller as defined in subparagraph (iv) of this paragraph, with which the mobile telecommunications customer contracts for the provision of mobile telecommunications service.

(iii) "Licensed service area" shall mean the geographic area in which a home service provider is authorized by law or contract to provide mobile telecommunications service to a mobile telecommunications

customer.

(iv) "Reseller" shall mean a provider who purchases telecommunications service from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with which a home service provider arranges for the services to its mobile telecommunications customers outside the home service provider's licensed service area.

(v) "Serving carrier" shall mean a facilities-based carrier providing mobile telecommunications service to a mobile telecommunications customer outside the home service provider's or reseller's licensed service area.

(28) "Taxing jurisdiction" shall mean any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

* (29) "E85" shall have the same meaning as in subdivision twenty-two of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

* (30) "B20" shall have the same meaning as in subdivision twenty-three of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

* (31) "CNG" shall have the same meaning as in subdivision twenty-four of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

* (32) "Hydrogen" shall have the same meaning as in subdivision twenty-five of section two hundred eighty-two of this chapter.

* NB Repealed September 1, 2031

(33) Modular home. A one- to three-family residential structure constructed at the building site from modular home modules, where the modules are connected and such structure is finished using building materials or other tangible personal property at the building site, such modular home conforms to the building and other codes applicable to one- to three-family site-built homes in the jurisdiction where such building site is located, and such finished modular home constitutes a capital

improvement. "Modular home" shall not include (i) a structure or portion of a structure built on-site, whether built by the modular home installer or another person, using building materials delivered to the site, even if some of such materials were manufactured, produced, or assembled off-site, such as, by way of example and not by way of limitation, concrete blocks, windows, door units, wall or roof panels, trusses and dormers; (ii) a shed, gazebo, any unattached garage or the like (even if made or built by a manufacturer of modular home modules); or (iii) a mobile home.

(34) Transportation service. The service of transporting, carrying or conveying a person or persons by livery service; whether to a single destination or to multiple destinations; and whether the compensation paid by or on behalf of the passenger is based on mileage, trip, time consumed or any other basis. A service that begins and ends in this state is deemed intra-state even if it passes outside this state during a portion of the trip. However, transportation service does not include transportation of persons in connection with funerals. Transportation service includes transporting, carrying, or conveying property of the person being transported, whether owned by or in the care of such person. Notwithstanding the foregoing, transportation service shall not include a TNC prearranged trip, as that term is defined in article forty-four-B of the vehicle and traffic law, that is subject to tax under article twenty-nine-B of this chapter. In addition to what is included in the definition of "receipt" in paragraph three of this subdivision, receipts from the sale of transportation service subject to tax include any handling, carrying, baggage, booking service, administrative, mark-up, additional, or other charge, of any nature, made in conjunction with the transportation service. Livery service means service provided by limousine, black car or other motor vehicle, with a driver, but excluding (i) a taxicab, (ii) a bus, and (iii), in a city of one million or more in this state, an affiliated livery vehicle, and excluding any scheduled public service. Limousine means any vehicle with a seating capacity of up to fourteen persons, excluding the driver, and any vehicle with a seating capacity of between fifteen and twenty persons, excluding the driver, that has only two axles and four tires. "Bus" means any motor vehicle with a seating capacity of at least fifteen persons, excluding the driver, that does not otherwise qualify

as a limousine. Black car means a for-hire vehicle dispatched from a central facility. "Affiliated livery vehicle" means a for-hire motor vehicle with a seating capacity of up to six persons, including the driver, other than a black car or luxury limousine, that is authorized and licensed by the taxi and limousine commission of a city of one million or more to be dispatched by a base station located in such a city and regulated by such taxi and limousine commission; and the charges for service provided by an affiliated livery vehicle are on the basis of flat rate, time, mileage, or zones and not on a garage to garage basis.

(35) Modular home modules. The component sections that will be installed on-site to construct a modular home, each of which sections is (i) engineered and manufactured in a factory, (ii) shipped or delivered to the building site on a truck or other vehicle, (iii) installed at the site, on a permanent foundation, to become part of the modular home and (iv) not by itself suitable for occupancy. Every group of modules that will be installed in this state as a modular home, or, if a modular home is to be built from a single module, that single module, shall, prior to shipment from the place where it is made, bear the insignia of approval issued by the department of state pursuant to the authority of article eighteen of the executive law and regulations thereunder; and the department of state shall cooperate with the commissioner and furnish such information as the commissioner requests to carry out this article and its purposes. A modular home module shall include tangible personal property shipped or delivered with the module from the factory by the manufacturer at the same time the module is shipped or delivered, such as exterior siding, roof shingles, roof vent pipes, interior trim pieces, paint, and interior doors, and supplies required and used to install them, but only if that property (i) was engineered or designed to be an integral component part of the module, (ii) matches, or is essential to the functioning of, the module, (iii) was not installed in the module at the time the module was made only because it would be damaged during, or interfere with, shipping or delivery of the module to the building site, (iv) will be permanently installed in the module at the building site by the manufacturer or by the purchaser of the module or by the contractor of either of them, (v) is listed in full on the contract, bill of sale, invoice or other memorandum of price given to

the purchaser or buyer, or in an addendum thereto, true copies of which the manufacturer shall retain as part of the records required to be kept by this article and make available on request, and (vi) is included in the sale price of the module, without any additional charge. A modular home module shall not include (i) furniture, fixtures, furnishings, appliances, attachments or similar tangible personal property not incorporated as component parts of the module at the time of its manufacture or (ii) building materials or other tangible personal property used to connect the modules or finish the modular home at the building site.

(36) New modular home module. A modular home module sold for the first time at retail.

(37) Electronic news service. (i) A service delivered, furnished or provided to or accessed by the purchaser electronically or digitally that meets all of the following conditions:

(A) The service's predominant purpose is the presentation of news content, which it prominently features;

(B) The service's news content (I) includes general news that is accessible without use of a search function; (II) is newly published or updated at least daily unless the service specifies some other interval, provided, however, that the news content must be newly updated or published within a twenty-four hour period that precedes or immediately follows a time when the non-news content is newly published or updated; and (III) is predominantly purchased from contracted wire services or written or produced by the employees or engaged independent contractors of the person providing the service, including, but not limited to, employees or engaged independent contractors of any affiliate of such person;

(C) The service is available to the public;

(D) The service holds itself out as a "news service," "newspaper," "magazine," "periodical," "journal," "post," or words of similar import and does not hold itself out as something other than one of such terms or a term of similar import.

(E) The service has continuity as to its title and the general nature of its content over time;

(F) The service is not, in whole or in substantial part, a listing, catalog, database, or compilation;

(G) The only search function the service offers without a separately-stated, reasonable charge is a search of the service's or of any of its affiliates' present or past news content. Provided, a service that satisfies all the clauses of this subparagraph except this clause may still qualify as an electronic news service for purposes of this paragraph if the provider of the service can show that the non-news content available through the search function is merely an incidental part of the service, including, for example, by showing that the cost to the person providing the service of any non-news content available through the search function is less than the cost to that person of providing the news content available through the service. Provided, further, that a purchaser's access to the service's search function for which there is a separately-stated, reasonable charge to the purchaser shall be treated separately and is not relevant as to whether this clause is satisfied.

(ii) The following definitions apply to subparagraph (i) of this paragraph and subdivision (gg) of section eleven hundred fifteen of this article:

(A) "News content" means the articles, photographs, and video and audio material concerning general news or specialized news and does not include listings, advertisements, catalogs, compilations, databases, or the like.

(B) "Non-news content" means any information other than news content.

(C) "Article" means a prose composition, including commentaries, reviews, editorials, op-eds, letters to the editor, and reader comments on articles. The term does not include listings, advertisements, catalogs, compilations, databases, or the like.

(D) "General news" means matters of general interest and reports of current events.

(E) "Specialized news" means matters of a specialized interest, such as legal, mercantile, financial, theatrical, entertainment news, political, religious, or sporting matters.

(F) "Cap amount" means three hundred percent of the annualized average daily newsstand price of the three newspapers with the largest total paid national daily circulation. The commissioner shall determine the cap amount annually and shall cause it to be published on the department's website and give other appropriate general notice thereof.

The commissioner shall determine and publish the cap amount annually by April first based on prices charged during the first week of January of that year, which cap amount shall apply for the succeeding twelve-month period commencing June first and ending May thirty-first. The calculation and publication of the cap amount under this clause shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(G) "Affiliate" means, with respect to any person, any other person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities, by contract or otherwise.

(38) Electronic periodical. (i) A publication delivered, furnished or provided to or accessed by the purchaser electronically or digitally that meets all of the following conditions:

(A) The publication's predominant purpose is the presentation of news content, which it prominently features;

(B) The publication is published at stated intervals, at least as frequently as four times a year but no more frequently than weekly, and is not updated between issues. However, the incidental provision of additional news content between issues will not prevent the requirement in this clause from being satisfied. In determining whether the news content added between issues is incidental, among the factors the commissioner is to consider is the amount of the news content added between issues relative to the news content in preceding issues and the frequency of the provision of additional news content between issues. Provided that the display of reader comments or letters to the editor between issues does not affect whether this clause is satisfied.

(C) The publication's news content is purchased from contracted wire services or written or produced by multiple employees or engaged independent contractors of the person providing the publication, including, but not limited to, employees or engaged independent contractors of any affiliate of such person;

(D) The publication is available to the public;

(E) The publication holds itself out as a "magazine," "periodical" or words of similar import and does not hold itself out as something other than a "magazine," "periodical," or words of similar import;

(F) The publication has continuity as to its title and the general nature of its content over time;

(G) The publication is not, in whole or in substantial part, a listing, catalog, database, or compilation; and

(H) The only search function the publication offers without a separately-stated, reasonable charge is a search of the publication's or of an affiliate's present or past news content. However: (I) the publication's provision of access, at no additional charge, to a search engine that, apart from the service, is otherwise available to the public for free is not relevant as to whether this clause is satisfied; and (II) the publication's provision of access to a search function for which there is a separately-stated, reasonable charge to the purchaser shall be treated separately and is not relevant as to whether this clause is satisfied.

(ii) For purposes of subparagraph (i) of this paragraph and the exemption provided for electronic periodicals in subdivision (gg) of section eleven hundred fifteen of this article, "articles" has the same meaning as in subparagraph (ii) of paragraph thirty-seven of subdivision (b) of this section and "news content" means articles, photographs, and video and audio material devoted to literature, the sciences, the arts, news, an industry, profession, sport or other field of endeavor, and does not include listings, advertisements, catalogs, compilations, databases, or the like.

(c) When used in this article for the purposes of the tax imposed under subdivision (e) of section eleven hundred five of this article, the following terms shall mean:

(1) Hotel. A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, boarding house or club, whether or not meals are served.

(2) Occupancy. The use or possession, or the right to the use or possession, of any room in a hotel or short term rental unit. "Right to the use or possession" includes the rights of a room remarketer as

described in paragraph eight of this subdivision.

(3) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel or short term rental unit under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. "Right to use or possess" includes the rights of a room remarketer as described in paragraph eight of this subdivision.

(4) Operator. Any person operating a hotel or short term rental unit. Such term shall include a room remarketer and such room remarketer shall be deemed to operate a hotel, or portion thereof, with respect to which such person has the rights of a room remarketer.

(5) Permanent resident. Any occupant of any room or rooms in a hotel or short term rental unit for at least ninety consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

(6) Rent. The consideration received for occupancy, including any service or other charge or amount required to be paid as a condition for occupancy, valued in money, whether received in money or otherwise and whether received or collected by the booking service, operator or a room remarketer or another person on behalf of any of them.

(7) Room. Any room or rooms of any kind in any part or portion of a hotel or short term rental unit, which is available for or let out for any purpose other than a place of assembly.

(8) Room remarketer. A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in a hotel for an amount determined by the room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefor, shall be the "rights of a room remarketer". A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer.

(9) Short term rental unit. A building or portion of it that is used for the lodging of guests. The term "short term rental unit" includes a house, an apartment, a condominium, a cooperative unit, a cabin, a cottage, a bungalow, or a similar furnished living unit, or one or more rooms therein, where sleeping accommodations are provided for the

lodging of paying occupants, the typical occupants are transients or travelers, and the relationship between the operator and occupant is not that of a landlord and tenant, provided that, in a city with a population of a million or more, the term "short term rental unit" shall also include any building or portion of a building that is a short-term rental, as such term is defined in section 26-3101 of chapter thirty-one of title twenty-six of the administrative code of the city of New York. It is not necessary that meals are served. A building or portion of a building may qualify as a short term rental unit whether or not amenities, including but not limited to daily housekeeping services, concierge services, or linen services, are provided.

(10) (i) Booking service. A person who, pursuant to an agreement with an operator or operators, facilitates the occupancy of a short term rental unit for such operator or operators. A person "facilitates the occupancy of a short term rental unit" for purposes of this paragraph when the person meets both of the following conditions: (A) such person provides the forum in which, or by means of which, the sale of the occupancy takes place or the offer of such sale is accepted, including a shop, store, or booth, an internet website, mobile device application, catalog, or similar forum; and (B) such person or an affiliate of such person collects the rent paid by a customer to an operator for the occupancy of a short term rental unit, or contracts with a third party to collect such rent.

(ii) For the purposes of this article, the term "booking service" shall not include a "room remarketer" as defined in paragraph eight of this subdivision. For purposes of this paragraph, persons are affiliated if one person has an ownership interest of more than five percent, whether direct or indirect, in another, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons that are affiliated persons with respect to each other.

(d) When used in this article for purposes of the tax imposed under subdivision (f) of section eleven hundred five, the following terms shall mean:

(1) Active annual member. A member who is not a life member but who enjoys full club privileges as distinguished from the privileges enjoyed by a person holding a nonresident membership, an associate membership,

or other partial or restricted membership.

(2) Admission charge. The amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

(3) Amusement charge. Any admission charge, dues or charge of roof garden, cabaret or other similar place.

(4) Charge of a roof garden, cabaret or other similar place. Any charge made for admission, refreshment, service, or merchandise at a roof garden, cabaret or other similar place.

(5) Dramatic or musical arts admission charge. Any admission charge paid for admission to a theatre, opera house, concert hall or other hall or place of assembly for a live dramatic, choreographic or musical performance.

(6) Dues. Any dues or membership fee including any assessment, irrespective of the purpose for which made, and any charges for social or sports privileges or facilities, except charges for sports privileges or facilities offered to members' guests which would otherwise be exempt if paid directly by such guests.

(7) Initiation fee. Any payment, contribution, or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned.

(8) Lessor. Any person who is the owner, licensee or lessee of any place of amusement or roof garden, cabaret or other similar place which he leases, subleases or grants a license to use to other persons who make amusement charges or admission charges.

(9) Patron. Any person who pays an amusement charge or who is otherwise required to pay the tax imposed under such subdivision (f) of section eleven hundred five.

(10) Place of amusement. Any place where any facilities for entertainment, amusement, or sports are provided.

(11) Recipient. Any person who collects or receives or is under a duty to collect an amusement charge.

(12) Roof garden, cabaret or other similar place. Any roof garden, cabaret or other similar place which furnishes a public performance for profit, but not including a place where merely live dramatic or musical

arts performances are offered in conjunction with the serving or selling of food, refreshment or merchandise, so long as such serving or selling of food, refreshment or merchandise is merely incidental to such performances.

(13) Social or athletic club. Any club or organization of which a material purpose or activity is social or athletic.

(14) Honorary member. A membership granted in a social or athletic club without payment of dues which may provide full or partial club privileges.

(e) When used in this article for the purposes of the taxes imposed under subdivision (a) of section eleven hundred five of this article and by section eleven hundred ten of this article, the following terms shall mean:

(1) Marketplace provider. A person who, pursuant to an agreement with a marketplace seller, facilitates sales of tangible personal property by such marketplace seller or sellers. A person "facilitates a sale of tangible personal property" for purposes of this paragraph when the person meets both of the following conditions: (A) such person provides the forum in which, or by means of which, the sale takes place or the offer of sale is accepted, including a shop, store, or booth, an internet website, catalog, or similar forum; and (B) such person or an affiliate of such person collects the receipts paid by a customer to a marketplace seller for a sale of tangible personal property, or contracts with a third party to collect such receipts. For purposes of this paragraph, a "sale of tangible personal property" shall not include the rental of a passenger car as described in section eleven hundred sixty of this chapter but shall include a lease described in subdivision (i) of section eleven hundred eleven of this article and peer-to-peer car sharing as described in section nine hundred of the general business law. For purposes of this paragraph, persons are affiliated if one person has an ownership interest of more than five percent, whether direct or indirect, in another, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons that are affiliated persons with respect to each other. Notwithstanding anything in this paragraph, a person who is not otherwise registered pursuant to section eleven hundred thirty-four of this article is not a marketplace

provider if such person has no physical presence in New York and, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, can show that the cumulative total gross receipts of sales it has made or facilitated of property delivered in this state does not exceed five hundred thousand dollars or that such person has not made or facilitated more than one hundred sales of property delivered in this state. However, such person may elect to register as a marketplace provider, and, once registered, will be subject to the provisions of this article.

(2) Marketplace seller. Any person, whether or not such person is required to obtain a certificate of authority under section eleven hundred thirty-four of this article, who has an agreement with a marketplace provider under which the marketplace provider will facilitate sales of tangible personal property by such person within the meaning of paragraph one of this subdivision.

§ 1102. Prepayment of sales tax on motor fuel and diesel motor fuel.

(a) * (1) Every distributor of motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax on each gallon of motor fuel (i) which he imports or causes to be imported into this state for use, distribution, storage or sale in the state or produces, refines, manufactures or compounds in this state or (ii) if the tax has not been imposed prior to its sale in this state, which he sells (which acts shall in regard to motor fuel hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of the laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this article or a hospital included in the organizations described in paragraph four of such subdivision for its own use and consumption and except kero-jet fuel when imported by an airline for use in its airplanes, and except CNG, and except hydrogen, and except E85 when delivered to a filling station and placed in a storage tank of such

filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle, and except aviation gasoline sold for use in commercial aircraft and general aviation aircraft.

* NB Effective until September 1, 2031

* (1) Every distributor of motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax on each gallon of motor fuel (i) which he imports or causes to be imported into this state for use, distribution, storage or sale in the state or produces, refines, manufactures or compounds in this state or (ii) if the tax has not been imposed prior to its sale in this state, which he sells (which acts shall in regard to motor fuel hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of the laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this article or a hospital included in the organizations described in paragraph four of such subdivision for its own use and consumption and except kero-jet fuel when imported by an airline for use in its airplanes, and except aviation gasoline sold for use in commercial aircraft and general aviation aircraft.

* NB Effective September 1, 2031

* (2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the removal of highway diesel motor fuel from a terminal, other than by pipeline, barge, tanker or other vessel, or the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of

the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons or to the sale of CNG or hydrogen; (iii) the sale of previously untaxed qualified biodiesel, as defined in subdivision twenty-three of section two hundred eighty-two of this chapter, to a person registered under article twelve-A of this chapter as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such qualified biodiesel can be dispensed into the fuel tank of a motor vehicle; or (iv) the sale of previously untaxed highway diesel motor fuel by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where the highway diesel motor fuel is either: (A) being delivered by pipeline, railcar, barge, tanker or other vessel to a terminal, the operator of which terminal is registered under section two hundred eighty-three-b of this chapter, or (B) within such a terminal where it has been so delivered. Provided, however, that the exemption set forth in this subparagraph shall not apply to any highway diesel motor fuel if it is removed from a terminal, other than by pipeline, barge, tanker or other vessel.

* NB Effective until September 1, 2031

* (2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the removal of highway diesel motor fuel from a

terminal, other than by pipeline, barge, tanker or other vessel, or the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; (iii) the sale of previously untaxed qualified biodiesel, as defined in subdivision twenty-three of section two hundred eighty-two of this chapter to a person registered under article twelve-A of this chapter as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such qualified biodiesel can be dispensed into the fuel tank of a motor vehicle; or (iv) the sale of previously untaxed highway diesel motor fuel by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where the highway diesel motor fuel is either: (A) being delivered by pipeline, railcar, barge, tanker or other vessel to a terminal, the operator of which terminal is registered under section two hundred eighty-three-b of this chapter, or (B) within such a terminal where it has been so delivered. Provided, however, that the exemption set forth in this subparagraph shall not apply to any highway diesel motor fuel once it is removed from a terminal, other than by pipeline, barge, tanker or other vessel.

* NB Effective September 1, 2031

(3) The amount of such prepayment per gallon shall be computed pursuant to the provisions of subdivision (e) of section eleven hundred

eleven of this article. Provided, further, no motor fuel or diesel motor fuel shall be included in the measure of the tax under clause (i) of paragraph one and paragraph two of this subdivision unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution.

(b) The taxes required to be prepaid pursuant to this section shall be administered and collected in a like manner as the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. All the provisions of this article relating to or applicable to the administration, collection and disposition of the taxes imposed by such sections shall apply to the tax required to be prepaid under this section so far as such provisions can be made applicable to such prepayments of tax with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the tax so imposed, provided, however, that the provisions of paragraph one of subdivision (c) of section eleven hundred thirty-seven of this article and the reference in section eleven hundred thirty-seven-A of this article to such paragraph one of subdivision (c) of section eleven hundred thirty-seven shall not be applicable to such tax required to be prepaid under this section. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or is not relevant to the tax required to be prepaid by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to the tax required to be prepaid pursuant to this section unless a different meaning is clearly required. Provided, further, that, except as otherwise provided in subdivision (j) of section eleven hundred fifteen of this article and except as otherwise provided in paragraph five of subdivision (b) of section eleven hundred sixteen of this article, the exemptions provided in such sections (other than that provided in paragraph nine of subdivision (a) of such section eleven hundred fifteen with respect to purchases of kero-jet fuel) shall not apply to the tax required to be prepaid under this section.

(c) Nothing in this article shall be construed to require the payment of the tax required to be prepaid pursuant to this section more than

once upon motor fuel or diesel motor fuel sold within the state. When the foregoing prepaid tax imposed pursuant to this section is paid it shall have been so paid on account of the taxes imposed by this article or pursuant to the authority of article twenty-nine of this chapter with respect to the retail sale or use of motor fuel or diesel motor fuel. Nothing in this section shall modify or affect the taxes imposed by sections eleven hundred five and eleven hundred ten of this article as applied to receipts from the sale or use of such fuel.

(d) Deposit and disposition of revenue. (1) Consistent with sections eleven hundred forty-eight and twelve hundred sixty-one of this chapter, the taxes imposed pursuant to this section and interest and penalties thereon received by the commissioner, after deducting the amount which the commissioner of taxation and finance or his delegate shall determine to be necessary for reasonable costs of the commissioner in administering, collecting and distributing such taxes, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller. Of the total revenue collected or received under this section, the comptroller shall retain in his hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds under this article and pursuant to the authority of article twenty-nine of this chapter.

(2) On or before the twelfth day of each month, after reserving such amount for such refunds and such costs, the commissioner or the commissioner's delegate shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and, in addition, on or before the last day of June and December the commissioner or delegate shall certify the amount of such moneys received during and including the first twenty-five days of said months. At the time the commissioner prepares such certification, the commissioner or the commissioner's delegate shall determine the receipts attributable to the amount, and number of gallons, of motor fuel and diesel motor fuel sold at retail in each county and city and in the metropolitan commuter transportation district subject to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article and the like taxes imposed pursuant to the authority of article twenty-nine of this chapter and the

commissioner or delegate shall certify the portion of such receipts and gallons from the total payments that represents the prepaid tax on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter (determined without regard to the taxes imposed by this section and any like taxes imposed pursuant to the authority of article twenty-nine of this chapter) based upon the retail sales or uses of such fuel in such jurisdiction or district. The amount of revenues so certified shall be deposited and distributed by the comptroller in accordance therewith. Where the amount so certified in any distribution is more or less than the amount due, the amount of the overpayment or underpayment shall be determined as soon after the discovery of the overpayment or underpayment as is reasonably possible and subsequent certifications to the comptroller shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other pertinent facts and circumstances.

(e) For the purposes of this section and article twelve-A of this chapter the term "use" shall mean, in addition to the meaning set forth in paragraph seven of subdivision (b) of section eleven hundred one of this article, the exercise of any right or power over motor fuel or diesel motor fuel by any person, whether or not a purchaser, including, but not limited to, the receiving, the withdrawal from storage or any consumption of such fuel.

(f) Every wholesaler of motor fuel, as such term is defined by subdivision twenty-seven of section two hundred eighty-two of this chapter, shall pay or be entitled to a credit or refund of the tax imposed by this section on gallons of motor fuel under the circumstances set forth in paragraph three of subdivision (e) of section eleven hundred eleven of this article.

*(g) The tax imposed by this section must be charged on the sale, other than a retail sale or a sale that is otherwise exempt under this article, of each gallon of motor fuel or Diesel motor fuel. If the taxes imposed by this section have not already been assumed or paid by the distributor on any quantity of such fuel for any reason, including, but not limited to, the expansion of such fuel as a result of temperature

fluctuation, the distributor must remit such taxes to the commissioner on the return for the period in which such sale was made.

* NB Effective September 1, 2023

§ 1103. Prepayment of sales tax on cigarettes. (a)(1) Every cigarette agent shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax on cigarettes possessed for sale or use in this state and to which an agent is required to affix cigarette tax stamps under article twenty of this chapter, at the time that the agent is required to purchase and affix such stamps (or as otherwise prescribed by the commissioner pursuant to such article twenty) and the provisions of such article twenty in relation to the use of stamps to evidence payment of the tax imposed by such article twenty shall be applicable to the prepayment imposed by this section, except no tax shall be required to be prepaid on cigarettes sold under circumstances that this state is without power to impose such prepayment or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and written policy statements of such an agency applicable to such sales.

(2) The tax imposed by this section shall be paid at the same time and in the same manner as the tax imposed by such article twenty with respect to cigarettes. The commissioner may, in the commissioner's discretion, permit an agent to pay the tax imposed under this section at the same time that the agent pays for cigarette tax stamps under article twenty of this chapter and may require any such agent to file with the department a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in the state or other security acceptable to the commissioner, in such amount as the commissioner may fix, to secure the payment of any sums due from such agent pursuant to this section. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner and may be sold by the commissioner if it becomes necessary

to do so in order to recover any sums due from such agent pursuant to this section, but no such sale shall be had until after such agent shall have had an opportunity to litigate the validity of any prepayment of tax if it elects to do so. Upon any such sale, the surplus, if any, above the sums due under this section shall be returned to such agent. Any bond or security required under this section may be jointly administered with the bond or security required of the agent under section four hundred seventy-two of this chapter and in such event shall secure payment of the sums due under such article twenty and under this section. The tax imposed by this section and the portion of the cost of any stamp which evidences payment of the tax imposed by this section and which is attributable to the tax imposed by this section shall not be included in the term "basic cost of cigarettes" as such term is defined in section four hundred eighty-three of this chapter.

(3) Every person other than an agent shall prepay the tax imposed by this section at the same time and in the same manner as the use tax imposed by section four hundred seventy-one-a of this chapter. The commissioner may require any compensating use tax imposed by section eleven hundred ten and pursuant to the authority of article twenty-nine of this chapter to be paid at such time after allowing for the credit provided by subdivision (b) of section eleven hundred twenty-one of this article.

(4) The amount of the prepayment for cigarettes imposed by this section shall be computed pursuant to the provisions of subdivision (j) of section eleven hundred eleven of this article.

(b) Except as otherwise provided in this section, the taxes required to be prepaid pursuant to this section shall be administered and collected in a like manner as the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. All the provisions of this article relating to or applicable to the administration, collection and disposition of the taxes imposed by such sections shall apply to the tax required to be prepaid under this section so far as such provisions can be made applicable to such prepayments of tax with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the tax so imposed; provided, however, that the provisions of paragraph one of subdivision (c) of section eleven hundred thirty-seven of this article shall not be

applicable to such tax required to be prepaid under this section. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or is not relevant to the tax required to be prepaid by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to the tax required to be prepaid pursuant to this section unless a different meaning is clearly required.

(c) Nothing in this article shall be construed to require the payment of the tax required to be prepaid pursuant to this section more than once upon cigarettes possessed for sale or used within the state. When the prepaid tax imposed pursuant to this section is paid, it shall have been so paid on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter with respect to the retail sale or the use of cigarettes. Nothing in this section shall modify or affect the taxes imposed by sections eleven hundred five and eleven hundred ten of this article as applied to receipts from the sale, or to the use, of such cigarettes.

(d) Deposit and disposition of revenue. (1) Consistent with sections eleven hundred forty-eight of this article and twelve hundred sixty-one of this chapter, the taxes required to be prepaid pursuant to this section and interest and penalties thereon received by the commissioner, after deducting the amount which the commissioner shall determine to be necessary for reasonable costs of the commissioner in administering, collecting, and distributing such taxes, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller. Of the total revenue collected or received under this section, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds under this article and pursuant to the authority of article twenty-nine of this chapter.

(2) On or before the twelfth day of each month, after reserving such amount for such refunds and such costs, the commissioner shall determine the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and, in addition, on or before the last day of June and December the commissioner shall

determine in like manner the amount of such moneys received during and including the first twenty-five days of said months. The commissioner shall determine the proportion of revenues attributable to receipts for the period for which the determination is made pursuant to the preceding sentence from taxes on sales and uses of property and services and rent and amusement charges imposed by this article and pursuant to the authority of article twenty-nine of this chapter and administered by the commissioner which is payable to each jurisdiction determined without regard to this section. The amount of revenues so determined pursuant to this section shall be deposited and distributed by the comptroller in accordance with the same percentage amount to which a jurisdiction is entitled determined without regard to this section. Where the amount so determined in any distribution from such taxes (other than the tax imposed by this section) is more or less than the amount due, the amount of the overpayment or underpayment shall be determined as soon after the discovery of the overpayment or underpayment as is reasonably possible and subsequent determinations shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other pertinent facts and circumstances. The commissioner shall not be liable for any overestimate or underestimate of the amount of the distribution. Nor shall the commissioner be liable for any inaccuracy in any determination with respect to the amount of the distribution or any required adjustment with respect to the distribution, but the commissioner shall as soon as practicable after discovery of any error adjust the next determination under this section to reflect any such error.

PART II--IMPOSITION OF TAXES

§ 1104. Convention center hotel unit fee. (a) Imposition. In addition to any other fee or tax imposed by this article or any other law, on and after April first, two thousand five, there is hereby imposed within the territorial limits of a city with a population of a million or more and

there shall be paid a unit fee on every occupancy of a unit in a hotel or short term rental unit in such city at the rate of one dollar and fifty cents per unit per day, except that such unit fee shall not be imposed upon (1) occupancy by a permanent resident or (2) where the rent per unit is not more than at the rate of two dollars per day.

(b) Administration and enforcement. The unit fee imposed by this section shall be administered and collected in a like manner as the tax imposed by subdivision (e) of section eleven hundred five of this article. All the provisions of this article (except sections eleven hundred seven, eleven hundred eight and eleven hundred nine), including the definition and exemption provisions, relating to or applicable to the administration, collection and disposition of the tax imposed by subdivision (e) of such section eleven hundred five of this article shall apply to the unit fee imposed by this section so far as such provisions can be made applicable to such unit fee with such limitations as are set forth in this article, and such modifications as are set forth in this section and as may be necessary in order to adopt such language to the unit fee so imposed. Such provisions shall apply with the same force and effect as if the language of those provisions had been incorporated in full in this section and had expressly referred to the unit fee imposed by this section, except to the extent that any provision is either inconsistent with a provision of this section or is not relevant to the unit fee imposed by this section. For purposes of this section, unless a different meaning is clearly required: (1) any reference in this article to the tax or taxes imposed by this article shall be deemed to refer also to the unit fee imposed by this section; and (2) any reference to tax, taxes or sales tax in section eighteen hundred seventeen of this chapter shall be deemed to refer also to the unit fee imposed by this section.

(c) Transitional provision. The unit fee imposed by this section shall be paid on any occupancy on or after April first, two thousand five, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where the charge for occupancy is paid on a weekly, monthly or other term basis, the occupancy shall be subject to the unit fee imposed by this section to the extent that it covers any day on or after April first, two thousand five. Where a person occupies a unit for less than a full day and pays less than the rent for a full day, the unit fee

due pursuant to this section shall nevertheless be the same amount as would be due had such person occupied the unit for a full day at the rent for a full day.

(d) Deposit and disposition of revenue. (1) Notwithstanding any provision of law to the contrary, the fees, interest and penalties imposed by this section and received by the commissioner, after deducting the amount which the commissioner shall determine to be necessary for reasonable costs to administer, collect and distribute such fees, penalties and interest, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller, to be held in trust for the convention center development corporation established by chapter thirty-five of the laws of nineteen hundred seventy-nine, as amended. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this section, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds under this section.

(2) On or before the twelfth day of each month: (A) after reserving such amount for such refunds and such costs, the commissioner shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the fees, interest and penalties so imposed; and (B) the amount of revenues so certified shall be paid by the comptroller to the chief fiscal officer of the convention center development corporation established by chapter thirty-five of the laws of nineteen hundred seventy-nine, as amended, for disposition in the convention center development fund established by such chapter thirty-five of the laws of nineteen hundred seventy-nine, as amended.

(e) Termination of unit fee. (1) At the end of the last day of the month in which all the bonds, secured in whole or in part by such fee, issued by such convention center development corporation, established by chapter thirty-five of the laws of nineteen hundred seventy-nine, as amended, shall have been fully paid and discharged or shall have been deemed to be paid under the resolution authorizing such bonds, together

with interest thereon and interest on unpaid installments of interest, the unit fee imposed by this section shall terminate. Despite such termination, the provisions of this section and any regulations promulgated thereunder, including the provisions with respect to assessment, payment, termination, collection and refund of such fees, penalties and interest, the requirements for filing returns, preservation of records and disposition of revenue shall continue in full force and effect with respect to all such fees accrued up to the effective date of such termination.

(2) At least ninety days prior to the date that the unit fee is imposed by this section shall have terminated pursuant to paragraph one of this subdivision, the chief executive officer, or such officer's delegate, of such development corporation shall provide written notification to the commissioner of the date by which such unit fee shall have terminated, so that such commissioner can timely notify persons required to collect tax, as defined by subdivision one of section eleven hundred thirty-one of this article, of such termination and take such other steps as are necessary or desirable to administer such termination. Provided that failure by such chief executive officer or such officer's delegate to provide such notice shall not affect the termination of such unit fee.

§ 1105. Imposition of sales tax. On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

(b) (1) The receipts from every sale, other than sales for resale, of the following: (A) gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, including the transportation, transmission or distribution of gas or electricity, even if sold separately; (B) telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service and except any telecommunications service the receipts from the sale of which are subject to tax under paragraph two of this subdivision; (C) a telephone

answering service; and (D) a prepaid telephone calling service.

(2) The receipts from every sale of mobile telecommunications service provided by a home service provider, other than sales for resale, that are voice services, or any other services that are taxable under subparagraph (B) of paragraph one of this subdivision, sold for a fixed periodic charge (not separately stated), whether or not sold with other services.

(3) The tax imposed pursuant to this subdivision is imposed on receipts from charges for intrastate mobile telecommunications service of whatever nature in any state if the mobile telecommunications customer's place of primary use is in this state.

(4) (A) For the purpose of subparagraph (B) of paragraph one of this subdivision, receipts from the sale of telephony or telephone service constituting the actual delivery of telephony or telephone service under a prepaid telephone calling service (for instance, when the receipt is represented by a debit to a prepaid account) shall be excluded from the receipts subject to tax under such subparagraph; and (B) for purposes of subparagraph (B) of paragraph one and paragraph two of this subdivision, a particular sale of telephony or telephone service to a vendor that resells such telephony or telephone service as a component of a prepaid telephone calling service shall be deemed a sale for resale of telephony or telegraph service.

(c) The receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, electronic news services, radio broadcasters and television broadcasters in the collection and dissemination of news, and excluding meteorological services.

(2) Producing, fabricating, processing, printing or imprinting

tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed.

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

(i) such services rendered by an individual who is engaged directly by a private home owner or lessee in or about his residence and who is not in a regular trade or business offering his services to the public; and

(ii) any receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining; and

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter; and

(iv) such services rendered with respect to commercial vessels and property used by or purchased for the use of such vessels, as such vessels and property are specified in paragraph eight of subdivision (a) of section eleven hundred fifteen of this article; and

(v) such services rendered with respect to commercial aircraft, machinery or equipment and property used by or purchased for the use of such aircraft as such aircraft, machinery or equipment, and property are specified in paragraph twenty-one of subdivision (a) of section eleven hundred fifteen of this article; and

(vi) such services rendered with respect to tangible personal property for use or consumption predominantly either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both, as such tangible personal property is specified in paragraph six of subdivision (a) of section eleven hundred fifteen of this article.

(vii) such services rendered with respect to fishing vessels and

property used by or purchased for such vessels as such vessels are specified in paragraph twenty-four of subdivision (a) of section eleven hundred fifteen of this article.

(viii) such services rendered with respect to railroad rolling stock primarily engaged in carrying freight in intrastate, interstate or foreign commerce, but not including any charge for parts or other tangible personal property whether such property has become a physical component part of the property upon which the services are performed or has been transferred to the purchaser of the services in conjunction with the performance of the services subject to the tax.

(ix) such services rendered with respect to tangible property used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.

(x) such services rendered with respect to property described in paragraph twelve-a of subdivision (a) of section eleven hundred fifteen of this article.

* (xi) Such services rendered with respect to property described in paragraph twelve-b of section eleven hundred fifteen of this article.

* NB Expired September 1, 2003

Provided, however, that nothing contained in this paragraph three shall be construed to exclude from tax under this paragraph or under subdivision (b) of this section any charge, made by a person furnishing service subject to tax under subdivision (b) of this section, for installing property at the premises of a purchaser of such a taxable service for use in connection with such service.

(4) Storing all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space.

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article, but excluding (i) services rendered by an individual who is not

in a regular trade or business offering his services to the public, (ii) services rendered directly with respect to real property, property or land used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting, (iii) services rendered with respect to real property, property or land used or consumed predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both and (iv) services of removal of waste material from a facility regulated as a transfer station or construction and demolition debris processing facility by the department of environmental conservation, provided that the waste material to be removed was not generated by the facility.

(6) Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles provided, however, this paragraph shall not apply to such facilities owned and operated by a public corporation, as defined by section sixty-six of the general construction law, other than a public benefit corporation, as defined by such section sixty-six, created by interstate compact or at least half of whose members are appointed by the governor, or any agency or instrumentality of a municipal corporation or district corporation as defined by such section sixty-six. Provided, however, receipts for such services paid to a homeowner's association by its members or receipts paid by members of a homeowner's association to a person leasing the parking facility from the homeowner's association shall not be subject to the tax imposed by this paragraph. For purposes of this paragraph, a homeowner's association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not

exclusive) by such owners or residents.

(7) Interior decorating and designing services, (whether or not in conjunction with the sale of tangible personal property), by whomsoever performed, including interior decorators and designers, architects or engineers; notwithstanding the foregoing, such services shall not include services which consist of the practice of architecture, as defined in section seventy-three hundred one of the education law, or the practice of engineering, as defined in section seventy-two hundred one of the education law, if the services are performed by an architect or engineer having a license or permit under the education law.

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and security services of every nature other than the performance of such services by a security officer licensed by the New York Waterfront Commission or the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

(9) (i) The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under paragraph one of this subdivision), which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph.

(ii) Notwithstanding the rate and date set forth in the opening undesignated paragraph of this section and notwithstanding the opening undesignated paragraph of this subdivision, on and after September

first, nineteen hundred ninety-three, in addition to any other tax imposed under this section, and in addition to any other tax or fee imposed under any other provision of law, there is hereby imposed and there shall be paid an additional tax at the rate of five percent upon the receipts which are subject to tax under subparagraph (i) of this paragraph on the furnishing or provision of an entertainment or information service which is received by the customer exclusively in an aural manner. Such additional tax shall not be imposed by section eleven hundred seven, eleven hundred eight or eleven hundred nine of this article and shall not be included among the taxes authorized to be imposed pursuant to the authority of article twenty-nine of this chapter.

(10) Transportation service, whether or not any tangible personal property is transferred in conjunction therewith, and regardless of whether the charge is paid in this state or out of state so long as the service is provided in this state.

Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in paragraphs (1) through (9) of this subdivision (c) are not receipts subject to the taxes imposed under such subdivision.

(d) (i) The receipts from every sale, other than sales for resale, of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale, other than sales for resale, of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section):

(1) in all instances where the sale is for consumption on the premises where sold;

(2) in those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink; and

(3) in those instances where the sale is made through a vending

machine that is activated by use of coin, currency, credit card or debit card (except the sale of drinks in a heated state made through such a vending machine) or is for consumption off the premises of the vendor, except where food (other than sandwiches) or drink or both are (A) sold in an unheated state and, (B) are of a type commonly sold for consumption off the premises and in the same form and condition, quantities and packaging, in establishments which are food stores other than those principally engaged in selling foods prepared and ready to be eaten.

(ii) The tax imposed by this subdivision shall not apply to:

(A) food or drink which is sold to an air line for consumption while in flight;

(B) food or drink sold to a student of a nursery school, kindergarten, elementary or secondary school at a restaurant or cafeteria located on the premises of such a school, or food or drink, other than beer, wine, or other alcoholic beverages, sold at a restaurant, tavern or other establishment located on the premises of a college, university or a school (other than a nursery school, kindergarten, elementary or secondary school) to a student enrolled therein who purchases such food or drink under a contractual arrangement whereby the student does not pay cash at the time such student is served, provided the school, college or university described in this subparagraph is operated by an exempt organization described in subdivision (a) of section eleven hundred sixteen, or is created, incorporated, registered, or licensed by the state legislature or pursuant to the education law or the regulations of the commissioner of education, or is incorporated by the regents of the university of the State of New York or with their consent or the consent of the commissioner of education as provided in section two hundred sixteen of the education law; provided, further, that the contractual arrangement between an enrolled student and a college, university or school may include a provision permitting such enrolled student to donate unused meal funds, meals or meal points to other students enrolled in such school, college or university who are facing food insecurity through a program operated by such school, college or university directly or through a contract with a nonprofit organization that is exempt from federal taxation pursuant to subsection (c) of section five hundred one of the internal revenue code, provided that no

part of the donated funds, meals or meal points inure to the benefit of such school, college, university or nonprofit organization; and

(C) Sales by a brewery licensed under section fifty-one of the alcoholic beverage control law, or a farm brewery licensed under section fifty-one-a of such law, of no more than four samples of beer not exceeding four fluid ounces each, and each sample shall be a different beer than the others. Only a customer's first purchase during each calendar day at each licensed entity shall be exempt under this subparagraph.

(e) (1) The rent for every occupancy of a room or rooms in a hotel or short term rental unit in this state, except that the tax shall not be imposed upon (i) a permanent resident, or (ii) where the rent is not more than at the rate of two dollars per day.

(2) Except as provided in subdivision (r) of section eleven hundred eleven of this part, when occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this article, and the rent paid for such occupancy does not qualify for the exemption in subdivision (kk) of section eleven hundred fifteen of this article, the entire consideration shall be treated as rent subject to tax under paragraph one of this subdivision; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges, or other items, on any sales slip, invoice, receipt, or other statement given the occupant, and such rent is reasonable in relation to the value of such property, services, amusement charges or other items, only such separately stated rent will be subject to tax under paragraph one of this subdivision.

(f) (1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to combative sports which charges are taxed under any other law of this state, or dramatic or musical arts performances, or live circus performances, or motion picture theaters, and except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. For any person having the permanent use or possession of a box or seat or a lease or a license, other than a season ticket, for the use of a box or seat at a place of

amusement, the tax shall be upon the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by the holder, licensee or lessee, and shall be paid by the holder, licensee or lessee.

(2) (i) The dues paid to any social or athletic club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars. Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members, other than honorary members, thereof regardless of the amount of their dues, and shall be paid on all dues or initiation fees for a period commencing on or after August first, nineteen hundred sixty-five. In the case of a life membership, the tax shall be upon the amount paid as life membership dues, however, a life member, other than an honorary member, paying an annual sales tax, based on the dues of an active annual member, shall continue such payments until the total amount of such tax paid is equal to the amount of tax that would have otherwise been due had the tax been imposed at the time such paid life membership has been purchased and at the then applicable rate.

(ii) Dues and initiation fees paid to the following shall not be subject to the tax imposed by this paragraph:

(A) A fraternal society, order or association operating under the lodge system;

(B) Any fraternal association of students of a college or university;

(C) A homeowners association. For purposes of this subparagraph, a homeowners association is an association (including a cooperative housing or apartment corporation) (I) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision and (II) which operates social or athletic facilities located in such area for use (whether or not exclusive) by such owners or residents.

(3) The amount paid as charges of a roof garden, cabaret or other similar place in the state.

§ 1105-A. Reduced tax rate on certain energy sources and services.

(a) Notwithstanding any other provisions of this article, but not for purposes of the taxes imposed by section eleven hundred eight of this part or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (a) or (b) of section eleven hundred five of this part on the receipts from the retail sale of fuel oil and coal used for residential purposes; the receipts from the retail sale of wood used for residential heating purposes; and the receipts from every sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services used for residential purposes shall be paid at the rate of three percent for the period commencing January first, nineteen hundred seventy-nine and ending December thirty-first, nineteen hundred seventy-nine; at the rate of two and one-half percent for the period commencing January first, nineteen hundred eighty and ending September thirtieth, nineteen hundred eighty, and at the rate of zero percent on and after October first, nineteen hundred eighty. The provisions of this subsection shall not apply to a sale of diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle.

(b) Notwithstanding any other provision of this article, but not for purposes of the taxes imposed by section eleven hundred eight of this part or pursuant to the authority of article twenty-nine of this chapter, for purposes of clauses (A) and (H) of subdivision (a) of section eleven hundred ten of this part, the compensating use tax imposed by such section on the use of the property and services described in subsection (a) of this section shall be at the rate of zero percent.

(c) (1) For the period commencing January first, nineteen hundred seventy-nine and ending December thirty-first, nineteen hundred seventy-nine the three percent rates set forth in this section shall apply to receipts from all retail sales and uses described in this section made, rendered or arising therefrom on or after January first,

nineteen hundred seventy-nine although made or rendered under a prior contract, if a delivery or transfer of possession of such property or services is made after said date. Where such property or service is sold on a monthly, quarterly or other term basis and the bills for such property or service are based on meter readings, the amount received on each bill for such property or service for a month or quarter or other term shall be a receipt subject to the reduced three percent rate of tax, but such rate shall be applicable to all bills based on meters read on or after January first, nineteen hundred seventy-nine, only where more than one-half of the number of days included in the month or other period bills are days subsequent to December thirty-first, nineteen hundred seventy-eight. Nothing contained in this section shall be deemed to exempt from tax under section eleven hundred five any transaction which may not be subject to the reduced rate of tax set forth in this section in effect on January first, nineteen hundred seventy-nine.

(2) For the period commencing January first, nineteen hundred eighty and ending September thirtieth, nineteen hundred eighty the two and one-half percent rates set forth in this section shall apply to receipts from all retail sales and uses described in this section made, rendered or arising therefrom on or after January first, nineteen hundred eighty although made on or rendered under a prior contract, if a delivery or transfer of possession of such property or services is made after said date. Where such property or service is sold on a monthly, quarterly or other term basis and the bills for such property or service are based on meter readings, the amount received on each bill for such property or service for a month, quarter or other term shall be a receipt subject to the reduced two and one-half percent rate of tax, but such rate shall be applicable to all bills based on meters read on or after January first, nineteen hundred eighty only where more than one-half of the number of days included in the month or other period billed are days subsequent to December thirty-first, nineteen hundred seventy-nine. Nothing contained in this section shall be deemed to exempt from tax under section eleven hundred five any transaction which may not be subject to the reduced rate of tax set forth in this section in effect on January first, nineteen hundred eighty.

(3) Commencing October first, nineteen hundred eighty the zero percent rates set forth in this section shall apply to receipts from all retail

sales and uses described in this section made, rendered or arising therefrom on or after October first, nineteen hundred eighty although made on or rendered under a prior contract, if a delivery or transfer of possession of such property or services is made after said date. Where such property or service is sold on a monthly, quarterly or other term basis, and the bills for such property or service are based on meter readings, the amount received on each bill for such property or service for a month, quarter or other term shall be a receipt subject to the reduced rate of tax, but such rate shall be applicable to all bills based on meters read on or after October first, nineteen hundred eighty only where more than one-half of the number of days included in the month or other period billed are days subsequent to September thirtieth, nineteen hundred eighty. Nothing contained in this section shall be deemed to exempt from tax under section eleven hundred five any transaction which may not be subject to the reduced rate of tax set forth in this section in effect on October first, nineteen hundred eighty.

(d) Where a residence is a part of a multiple dwelling or other premises consisting of residential and non-residential units, or where a portion of a residence is used for non-dwelling purposes including the conduct of a trade or business, the commissioner may establish such rules and regulations as may be necessary in order to allocate to such residence the portion of the sale or use of energy sources or services attributable to the residential portion.

(e) The tax commission may prescribe a certificate to be taken by the vendor of the energy sources or services specified in subsection (a) of this section from the purchaser of such energy sources or services. Where a certificate is required, unless such vendor shall have received such certificate in such form as the tax commission may prescribe, signed by the purchaser and setting forth his name and address, together with such other information as such commission may require, stating that the premises, for which such energy sources or services are purchased, is used solely as a residence or identifying the residential portion of premises, for which such energy sources or services are purchased including instances where a multiple dwelling unit or other premises consists of residential and nonresidential units or where a portion of a residence is used for non-dwelling purposes, such as the conduct of a

trade or business, the provisions of this section shall not apply and the tax shall be imposed at the rate provided for in sections eleven hundred five and eleven hundred ten. No further certificate need be furnished for any subsequent purchase for such premises if the information set forth in the certificate last furnished the vendor has not materially changed.

(f) The provisions of subsections (a) and (b) of this section shall not apply to the tax imposed pursuant to section eleven hundred seven of this part unless the city council of a city with a population of one million or more adopts a local law or resolution pursuant to subdivision (o) of section twelve hundred ten of this chapter.

§ 1105-B. Exemptions for certain parts, tools, supplies and services relating to tangible personal property used or consumed in production.

Notwithstanding any other provisions of this article: (a) Receipts from the retail sales of parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale by manufacturing, processing, generating, assembling, refining, mining or extracting shall be exempt from the tax imposed by subdivision (a) of section eleven hundred five of this article.

(b) Receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen of this article, including the parts with a useful life of one year or less, tools and supplies described in subdivision (a) of this section, to the extent subject to such tax, shall be exempt from the tax on sales imposed under subdivision (c) of section eleven hundred five of this article.

(c) Parts with a useful life of one year or less, tools and supplies described in subdivision (a) of this section and services described in subdivision (b) of this section shall be exempt from the compensating use tax imposed by section eleven hundred ten of this article.

§ 1106. Transitional provisions. (a) The taxes imposed under subdivisions (a), (c) and (d) of section eleven hundred five shall be paid upon all sales made and services rendered on or after August first, nineteen hundred sixty-five although made on or rendered under a prior contract, except as provided in section eleven hundred nineteen, and except that a delivery or transfer of possession of tangible personal property made after said date pursuant to an agreement for the sale of said property made before April first, nineteen hundred sixty-five shall not be subject to tax if: (1) such agreement for the sale of said property was made in writing, (2) the particular item or items of property so sold or agreed to be sold were segregated, before April first, nineteen hundred sixty-five, from any other similar property in the possession of the vendor and identified as having been appropriated to such sale or agreement of sale, and (3) the purchaser, before August first, nineteen hundred sixty-five shall have paid to the vendor not less than ten percent of the sale price of said property.

(b) The tax imposed under subdivision (b) of section eleven hundred five shall be paid with respect to receipts for property or services sold on or after August first, nineteen hundred sixty-five although made under a prior contract. Where property or service is sold on a monthly, quarterly or other term basis and the bills for such property or service are based on meter readings, the amount received on each bill for such property or service for a month or other term shall be a receipt subject to the tax, but such tax shall be applicable to all bills based on meters read on or after August first, nineteen hundred sixty-five only where more than one-half of the number of days included in the month or other period billed are days subsequent to July thirty-first, nineteen hundred sixty-five; provided, however, that where such bills are for telephone or telegraph service the tax shall apply to all receipts on such bills dated on or after August first, nineteen hundred sixty-five, for which no previous bill was rendered, excepting, however, charges for services furnished before the date of the first of such bills.

(c) The tax imposed under subdivision (e) of section eleven hundred five shall be paid upon any occupancy on and after August first, nineteen hundred sixty-five, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly, monthly or other term basis, the rent shall be subject to the

tax imposed under such subdivision (e) to the extent that it covers any period on and after August first, nineteen hundred sixty-five and such rent shall be apportioned on the basis of the ratio of the number of days falling within said period to the total number of days covered thereby.

(d) Except as otherwise hereinafter provided, the tax imposed under subdivision (f) of section eleven hundred five shall be applicable to any admission to or the use of facilities of a place of amusement occurring on or after August first, nineteen hundred sixty-five, whether or not the admission charge has been paid prior to such date, unless the tickets were actually sold and delivered (other than for resale) prior to August first, nineteen hundred sixty-five to a person attending the performance occurring on or after such date.

(e) A refund or credit equal to the amount of the sales or compensating use tax paid on the sale or use of tangible personal property, under a local law, ordinance or resolution imposed pursuant to the authority of chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four, as amended, or chapter two hundred seventy-eight of the laws of nineteen hundred forty-seven, as amended, shall be allowed, upon application to the tax commission as provided for herein, where such property has been used by the purchaser or user in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five and such property has become a physical component part of the property upon which the services are performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax, except that such refund or credit may not exceed the combined state and local taxes, if any, paid, pursuant to this article and under a tax imposed pursuant to the authority of article twenty-nine of this chapter, on the sale or use of the service in connection with which such property was used. Any refund or credit under this subdivision shall be paid out of or charged against the sales and use tax revenues derived from the taxes imposed under this article and pursuant to the authority of article twenty-nine of this chapter in the same proportion as the respective rates of such state and local taxes bear to the combined rate of both such taxes. The amount to be paid out of or charged against sales and use tax revenues of localities derived from the taxes imposed

pursuant to the authority of article twenty-nine of this chapter shall be paid out of or charged against such revenues of the locality which imposes the tax on the sale or use of the service in connection with which such property was used. An application for the refund or credit provided for herein may not be made until the tax on the sale or use of the service has been reported to the tax commission in the return of the vendor or the return of the customer, where such return is required, and such application must be made within three years of the time such tax was payable to the tax commission. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time that he files his application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit. The procedure for granting or denying such applications for refund or credit and review of such determinations shall be as provided in subdivision (b) of section eleven hundred thirty-nine. No interest shall be allowed or paid upon any refund made or credit allowed pursuant to this subdivision.

(f) With respect to the additional tax of one percent imposed effective April first, nineteen hundred sixty-nine, the provisions of subdivisions (a), (b), (c), (d) and (e) of this section apply, except that for the purposes of this subdivision, all references in said subdivisions (a), (b), (c) and (d) to August first, nineteen hundred sixty-five shall be read as referring to April first, nineteen hundred sixty-nine, all references in said subdivision (a) to April first, nineteen hundred sixty-five shall be read as referring to December first, nineteen hundred sixty-eight, and the reference in said subdivision (b) to July thirty-first, nineteen hundred sixty-five shall be read as referring to March thirty-first, nineteen hundred sixty-nine. Nothing herein contained shall be deemed to exempt from tax at the rate in effect prior to April first, nineteen hundred sixty-nine any transaction which may not be subject to the additional tax imposed effective on that date.

(g) With respect to the additional tax of one percent imposed effective June first, nineteen hundred seventy-one, the provisions of subdivisions (a), (b), (c), (d) and (e) of this section apply, except that for the purposes of this subdivision, all references in said

subdivisions (a), (b), (c) and (d) to August first, nineteen hundred sixty-five shall be read as referring to June first, nineteen hundred seventy-one, all references in said subdivision (a) to April first, nineteen hundred sixty-five shall be read as referring to February first, nineteen hundred seventy-one, and the reference in said subdivision (b) to July thirty-first, nineteen hundred sixty-five shall be read as referring to May thirty-first, nineteen hundred seventy-one. Nothing herein contained shall be deemed to exempt from tax at the rate in effect prior to June first, nineteen hundred seventy-one any transaction which may not be subject to the additional tax imposed effective on that date.

(h) With respect to the tax imposed under subdivision (a) of section eleven hundred five on retail sales of floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, made on or after the effective date of this subdivision, the tax imposed under subdivision (c) of section eleven hundred five on the service of installing floor covering rendered on or after such effective date and the compensating use tax imposed under section eleven hundred ten on taxable uses of floor covering occurring on or after such effective date, the provisions of subdivision (a) of this section apply, except that for the purposes of this subdivision, all references in said subdivision (a) to August first, nineteen hundred sixty-five, shall be read as referring to the effective date of this subdivision and all references in said subdivision (a) to April first, nineteen hundred sixty-five, shall be read as referring to the date four months prior to such effective date. Nothing herein contained shall be deemed to change the taxable status of any sale or use which occurred or service which was rendered prior to such effective date.

(i) The taxes imposed under paragraph five of subdivision (c) of section eleven hundred five with respect to interior cleaning and maintenance services performed on a regular contractual basis for a term of not less than thirty days and under paragraphs six through eight of such subdivision shall be paid with respect to receipts from all sales of services rendered after May thirty-first, nineteen hundred ninety, although rendered under a prior contract.

(j) (i) The tax imposed under subparagraph (i) of paragraph nine of subdivision (c) of section eleven hundred five shall be paid with

respect to receipts from all sales of services rendered after August thirty-first, nineteen hundred ninety, although rendered under a prior contract. Nothing herein contained shall be deemed to change the taxable status of any service which was rendered prior to September first, nineteen hundred ninety.

(ii) The tax imposed under subparagraph (ii) of paragraph nine of subdivision (c) of section eleven hundred five shall be paid with respect to the furnishing or provision of services after August thirty-first, nineteen hundred ninety-three, although furnished or provided under a prior contract.

(l) The tax imposed by paragraph ten of subdivision (c) of section eleven hundred five of this part must be paid with respect to receipts from all sales of services on or after the effective date of such paragraph although rendered or agreed to be rendered under a prior contract. Where a service is sold on a monthly, quarterly, yearly, or other term basis, the charge for the service will be subject to the tax imposed by that paragraph to the extent that the charge is applicable to any period on or after the date the tax becomes effective, and the charge must be apportioned on the basis of the ratio of the number of days falling within the period to the total number of days in the full term or period.

§ 1107. Temporary municipal assistance sales and compensating use taxes for cities of one million or more. (a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of four percent, which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had

been incorporated in full into this section and had expressly referred to the taxes imposed by this section.

(b) Exceptions. (1) The exemptions provided for in subdivision (c) of section eleven hundred fifteen shall not apply to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas, electricity, refrigeration or steam. (2) The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section. (3) Where a sale of tangible personal property or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the property sold, the property upon which the services were performed or such service is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property or of the service by the purchaser. (4) The provisions of section twelve hundred fourteen shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) hereof. (5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. (6) For purposes of this section, for periods of continuous occupancy first commencing after June third, nineteen hundred eighty, the term "permanent resident" means any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days shall be considered a permanent resident with regard to

the period of such occupancy. For purposes of this subdivision, a payment to the tax commission of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation. (7) The provision for a refund or credit contained in clause six of subdivision (a) of section eleven hundred nineteen shall not apply. (8) The tax imposed by subdivision (a) of this section shall not be imposed on: (i) receipts from interior cleaning and maintenance services performed on a regular contractual basis for a term of not less than thirty days subject to tax under paragraph five of subdivision (c) of section eleven hundred five other than window cleaning, rodent and pest control and trash removal from buildings or receipts from the services described in paragraph eight of subdivision (c) of section eleven hundred five to the extent a tax is imposed on such services by a city with a population of one million or more pursuant to the authority of subdivision (f) of section twelve hundred twelve-A of this chapter and (ii) receipts from the services described in paragraph six or seven of subdivision (c) of section eleven hundred five. (9) Except as otherwise provided by law, the exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen relating to clothing and footwear shall not apply. (10) The exemptions provided for in paragraph forty-one of subdivision (a) of section eleven hundred fifteen of this article shall not apply. (11) Notwithstanding any provision of law to the contrary, clothing and footwear and any item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing shall be exempt from the taxes imposed by this section.

(c) Tax on sale of service of parking, garaging or storing of motor vehicles. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five, eleven hundred ten and subdivision (a) of this section, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes at the rate of six percent on receipts from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family

dwelling), parking lot or other place of business engaged in providing parking, garaging or storing of motor vehicles provided, however, that this subdivision shall not apply to such facilities owned and operated by such city or an agency or instrumentality of such city or a public corporation the majority of whose members are appointed by the chief executive officer of such city or the legislative body of such city or both of them; provided, however, that receipts for such services paid to a homeowner's association by its members or receipts paid by members of a homeowner's association to a person leasing the parking facility from the homeowner's association shall not be subject to the tax imposed by this subdivision. For purposes of this subdivision, a homeowner's association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision; and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not exclusive) by such owners or residents. All provisions set forth in this article applicable to the taxes imposed under section eleven hundred five, including the definition and exemption provisions of this article, shall apply with respect to a tax imposed under this subdivision, except as to rate and except as otherwise provided herein. The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section.

(d) Termination of taxes. At the later of: (1) the end of the last day of the month in which all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged, together with interest thereon and interest on unpaid installments of interest, or (2) July first, two thousand eight, the taxes imposed by this section shall terminate. Despite such termination, the provisions of this section and any regulations promulgated thereunder, including the provisions with respect to assessment, payment, termination, collection and refund of such taxes, penalties and interest, the requirements for filing returns, preservation of records and disposition

of revenue shall continue in full force and effect with respect to all such taxes accrued up to the effective date of such termination.

§ 1108. Temporary municipal assistance sales and compensating use taxes for cities of under one million. (a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of less than one million, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of three percent, which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and has expressly referred to the taxes imposed by this section.

(b) Exceptions. (1) Notwithstanding any provision of law to the contrary, the receipts from the following shall be exempt from the tax on retail sales and the compensating use tax imposed by this section: All sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both.

(2) The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section.

(3) Where a sale of tangible personal property or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the property sold, the property upon which the services were performed or such service is or

will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser, the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property or of the service by the purchaser.

(4) The provisions of section twelve hundred fourteen shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) hereof.

(5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. For purposes of this subdivision, a payment to the tax commission of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

(c) Termination of taxes. At the end of the last day of the month in which all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged, together with interest thereon and interest on unpaid installments of interest, the taxes imposed by this section shall terminate. Despite such termination, the provisions of this section and any regulations promulgated thereunder, including the provisions with respect to assessment, payment, termination, collection and refund of such taxes, the requirements for filing returns, preservations of records and disposition of revenue shall continue in full force and effect with respect to all such taxes accrued up to the effective date of such termination.

§ 1109. Sales and compensating use taxes for the metropolitan commuter transportation district. (a) General. In addition to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article, there is hereby imposed within the territorial limits of the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of the public authorities law, and there shall be paid, additional taxes, at the rate of three-eighths of one percent, which shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and had expressly referred to the taxes imposed by this section. Notwithstanding the foregoing, the tax imposed by this section shall not apply to admissions to race tracks or simulcast facilities.

(b) Transitional provisions. (1) With respect to the one-fourth percent rate imposed effective September first, nineteen hundred eighty-one, the transitional provisions contained in subdivisions (a), (b), (c) and (d) of section eleven hundred six of this article shall apply to the taxes imposed by this section, except that all references in such subdivisions (a), (b), (c) and (d) to August first, nineteen hundred sixty-five shall be read as referring to September first, nineteen hundred eighty-one, all references in such subdivision (a) to April first, nineteen hundred sixty-five shall be read as referring to May first, nineteen hundred eighty-one, and the reference in such subdivision (b) to July thirty-first, nineteen hundred sixty-five shall be read as referring to August thirty-first, nineteen hundred eighty-one.

(2) With respect to the one-eighth percent rate imposed effective June first, two thousand five, the transitional provisions contained in subdivisions (a), (b), (c) and (d) of section eleven hundred six of this article shall apply to the taxes imposed by this section, except that all references in such subdivisions (a), (b), (c) and (d) to August first, nineteen hundred sixty-five, shall be read as referring to June first, two thousand five, all references in such subdivision (a) to

April first, nineteen hundred sixty-five, shall be read as referring to February first, two thousand five, and the reference in such subdivision (b) to July thirty-first, nineteen hundred sixty-five, shall be read as referring to May thirty-first, two thousand five.

(c) Deliveries outside the district; deliveries within the district of property sold or serviced elsewhere. Where a sale of tangible personal property or services, including an agreement therefor, is made in the district in which the taxes imposed by this section apply, but the property sold, the property upon which the services were performed or such service is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by this section. However, if delivery occurs or will occur in the district where the tax imposed by this section applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section, delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property or of the service by the purchaser. The provisions of section twelve hundred fourteen of this chapter shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city, county or school district shall mean the additional taxes imposed by this section.

(d) Deposit and disposition of revenue. (1) The taxes, interest and penalties imposed pursuant to this section and received by the tax commission, after deducting the amount which the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the tax commission in administering, collecting and distributing such taxes, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this section, the comptroller shall retain in his hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds under this section.

(2) On or before the twelfth day of each month, after reserving such

amount for such refunds and such costs, the commissioner of taxation and finance shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and in addition on or before the last day of June the commissioner shall certify the amount of such revenues received during and including the first twenty-five days of June. Fifteen percent of the revenues so certified shall be deposited by the comptroller in the mass transportation operating assistance fund established by section eighty-eight-a of the state finance law to the credit of the metropolitan mass transportation operating assistance account therein. Eighty-five percent of the revenues so certified shall be deposited by the comptroller in the dedicated mass transportation trust fund established pursuant to section eighty-nine-c of the state finance law to be distributed as follows: eighty-five percent of such amount shall be allocated to the New York city transit authority and its subsidiaries and the Staten Island rapid transit operating authority and fifteen percent of such amount shall be allocated to the Long Island Rail Road Company and Metro-North commuter railroad company in accordance with the procedures for payment and distribution specified in section twelve hundred seventy-c of the public authorities law, for payment, subject to appropriation, to the metropolitan transportation authority dedicated tax fund established pursuant to section twelve hundred seventy-c of the public authorities law.

(e) The provision for a refund or credit contained in clause six of subdivision (a) of section eleven hundred nineteen shall not apply.

(f) The exemption contained in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this article shall not apply.

(g) Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (1) In the event that a county, city or school district located in the metropolitan commuter transportation district imposes taxes pursuant to the authority of subpart B of part I of article twenty-nine of this chapter and elects to provide the clothing and footwear exemption authorized in paragraph one of subdivision (a) of section twelve hundred ten of this chapter, or the taxes provided for in section eleven hundred eight of this article are in effect in a city located in such district, the exemption provided by paragraph thirty of subdivision (a) of section eleven hundred fifteen of

this article shall be applicable in such portion of the metropolitan commuter transportation district in which such county, city or school district which elects to provide the clothing and footwear exemption authorized in paragraph one of subdivision (a) of section twelve hundred ten of this chapter is located, or where the taxes provided for in section eleven hundred eight of this part are in effect in a city located in such district. The commissioner shall determine and certify to the comptroller the amount of revenue forgone at the rate of three-eighths of one percent under this section in such county, city or school district on account of sales of clothing and footwear in such county, city or school district.

(2) Commencing with the sales tax quarterly period which commences on March first, two thousand, the commissioner shall make such determinations and certifications on the twelfth day of the month following the month in which sales tax quarterly returns are due under section eleven hundred thirty-six of this article with respect to such quarterly period for as long as such clothing and footwear exemptions from such taxes imposed pursuant to the authority of article twenty-nine of this chapter or by section eleven hundred eight of this part are in effect. Neither the commissioner nor the comptroller shall be held liable for any inaccuracy in such determinations and certifications. Such determinations and certifications may be based on such information as may be available to the commissioner at the time such determinations and certifications must be made under this subdivision and may be estimated on the basis of percentages or other indices calculated from distributions from prior periods. The commissioner shall be authorized to require such information as the commissioner deems necessary to comply with the requirements of this subdivision from persons required to file returns under such section eleven hundred thirty-six of this article.

(3) By the fifteenth day of the month in which the commissioner has made the certifications to the comptroller described in paragraph two of this subdivision, the comptroller shall bill any county, city or school district in such metropolitan commuter transportation district which provides such clothing and footwear exemption, and any city in such district in which the taxes imposed by section eleven hundred eight of this part are in effect, an amount equal to one-half of the amount

certified to the comptroller by the commissioner in respect of such county, city or school district; and such county, city or school district shall pay the amount of such bill to the comptroller by the twenty-fifth day of such month. The comptroller shall deposit any such amounts received as provided in subdivision (d) of this section.

(4) In the event that a county, city or school district imposing tax pursuant to the authority of subpart B of part I of article twenty-nine of this chapter does not pay in full a bill described in paragraph three of this subdivision by the twenty-fifth day of the month described in paragraphs two and three of this subdivision, the comptroller shall deduct any amount not paid from the amount of the next payment or payments due such county, city or school district pursuant to subdivision (c) of section twelve hundred sixty-one of this chapter until such amount not paid has been recovered. The comptroller shall deposit the amounts so deducted and recovered to be credited as provided in paragraph three of this subdivision.

(5) In the event that a city in which the taxes imposed by section eleven hundred eight of this article are in effect does not pay in full a bill described in paragraph three of this subdivision by the twenty-fifth day of the month described in paragraphs two and three of this subdivision, the comptroller shall deduct any amount not paid from the amount of any other moneys due such city from the comptroller, not otherwise pledged, dedicated or encumbered pursuant to other state law, until such amount not paid has been recovered. The comptroller shall deposit the amounts so deducted and recovered to be credited as provided in paragraph three of this subdivision.

(6) The commissioner shall certify the amount of any over calculation or under calculation of any certification required to be made to the comptroller under paragraph three of this subdivision as soon after its discovery as reasonably possible and subsequent bills to a city, county or school district to which the over calculation or under calculation relates shall be adjusted accordingly, provided that the comptroller may adjust such number of subsequent bills as the comptroller shall consider reasonable in view of the amount of the adjustment and all other facts and circumstances.

(7) On the same date that the comptroller is required to bill a county, city or school district an amount as provided in paragraph three

of this subdivision, the comptroller shall, after having first made any deposits required by section ninety-two-r of the state finance law and only to the extent that there are moneys remaining after having made such required deposits, withdraw from the state treasury, to the debit of the general fund, an amount equal to the total of the amounts required to be billed to counties, cities and school districts pursuant to such subdivision three and deposit such total amount to be credited as provided in such paragraph three. The amount of any over calculation or under calculation determined in paragraph six of this subdivision shall likewise be applied to the amounts required to be deposited under this paragraph, so that the amounts deposited under this paragraph equal the total of the amounts required to be billed to counties, cities and school districts under such paragraph three, as adjusted, pursuant to paragraph six of this subdivision.

(h) Notwithstanding any provision of law to the contrary:

(1) The commissioner shall determine and certify to the comptroller the amount of revenue foregone as a result of the cents per gallon tax in paragraph two of subdivision (m) of section eleven hundred eleven of this part in lieu of tax at the rate provided in subdivision (a) of this section.

(2) Commencing with the sales tax quarterly period beginning on June first, two thousand six, the commissioner shall make such determinations and certifications on the twelfth day of the month following the month in which sales tax quarterly returns are due under section eleven hundred thirty-six of this article with respect to such quarterly period. Such determinations and certifications may be based on such information as may be available to the commissioner at the time such determinations and certifications must be made under this subdivision. The commissioner shall be authorized to require such information as the commissioner deems necessary to comply with the requirements of this subdivision from persons required to file returns under such section eleven hundred thirty-six.

(3) The comptroller shall, after having first made any deposits required by section ninety-two-r of the state finance law and only to the extent that there are moneys remaining after having made such required deposits, withdraw from the state treasury, to the debit of the general fund, and shall deposit the amount certified by the commissioner

as such revenue foregone as provided in subdivision (d) of this section.

(4) Neither the commissioner nor the comptroller shall be held liable for any inaccuracy in such determinations and certifications. The commissioner shall certify the amount of any over calculation or under calculation of any certification required to be made to the comptroller under this subdivision as soon after its discovery as reasonably possible.

§ 1110. Imposition of compensating use tax. (a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraphs (1), (7) and (8) of subdivision (c) of section eleven hundred five of this part, (D) of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any of the services described in paragraphs (2), (3) and (7) of subdivision (c) of section eleven hundred five of this part have been performed, (E) of any telephone answering service described in subdivision (b) of section eleven hundred five of this part, (F) of any computer software written or otherwise created by the user if the user offers software of a similar kind for sale as such or as a component part of other property in the regular course of business, (G) of any

prepaid telephone calling service, and (H) of any gas or electricity described in subdivision (b) of section eleven hundred five of this part.

(b) For purposes of clause (A) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(c) For purposes of subclause (i) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the price at which items of the same kind of tangible personal property are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him; provided, however, that if the user uses such an item itself on its own premises (not including making a gift of such tangible personal property), solely in the conduct of the user's own business operations, and the item retains its characteristic as tangible personal property when so used, the tax shall be at the rate, and on the consideration, described in subdivision (d) of this section.

(d) For purposes of subclause (ii) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled into the tangible personal property the use of which is subject to tax, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one.

(e) Notwithstanding the foregoing, provisions of this section, for purposes of clause (B) of subdivision (a) of this section, there shall be no tax on any portion of such price which represents the value added by the user to tangible personal property which he fabricates and installs to the specifications of an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law, over and above the prevailing normal purchase price prior to such fabrication of such

tangible personal property which a manufacturer, producer or assembler would charge an unrelated contractor who similarly fabricated and installed such tangible personal property to the specifications of an addition or capital improvement to such real property, property or land.

(f) For purposes of clauses (C), (D), and (E) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the performance of the service and also including any charges for shipping and delivery of the property so transferred and of the tangible personal property upon which the service was performed as such charges are described in paragraph three of subdivision (b) of section eleven hundred one.

(g) For purposes of clause (F) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the tangible personal property which constitutes the blank medium, such as disks or tapes, used in conjunction with the software, or for the use of such property, and the mere storage, keeping, retention or withdrawal from storage of computer software described in such clause (F) by its author or other creator shall not be deemed a taxable use by such person.

(h) For purposes of clause (G) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the service and also including any charges for shipping and delivery of the property so transferred as such charges are described in paragraph three of subdivision (b) of section eleven hundred one; provided that, if the user offers like services for sale in the regular course of business, the tax shall be at the rate of four percent of the price at which the user offers such like services for sale.

(i) For purposes of clause (H) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for, or for the use of, the gas or electricity, including the consideration for any tangible personal property transferred in conjunction with the performance thereof, and including any charges described in paragraph three of subdivision (b) of section

eleven hundred one of this article.

§ 1111. Special rules for computing receipts and consideration. (a)

The retail sales tax imposed under subdivision (a) of section eleven hundred five of this part and the compensating use tax imposed under section eleven hundred ten of this part, when computed in respect to tangible personal property wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within this state, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by him, except to the extent otherwise provided in this section or section eleven hundred ten of this part.

(b) Tangible personal property, which has been purchased by a resident of New York state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property, provided, however:

(1) That where a taxpayer affirmatively shows that the property was used outside such state by him for more than six months prior to its use within this state, such property shall be taxed on the basis of current market value of the property at the time of its first use within this state. The value of such property, for compensating use tax purposes, may not exceed its cost.

(2) That the compensating use tax on such tangible personal property brought into this state (other than for complete consumption or for incorporation into real property located in this state) and used in the performance of a contract or sub-contract within this state by a purchaser or user for a period of less than six months may be based, at the option of the taxpayer, on the fair rental value of such property for the period of use within this state.

(c) For the amount and timing of tax in respect to property leased, or sold under a contract deferring payments, see section eleven hundred thirty-two. For the amount and timing of tax in respect to certain leased property, see subdivision (i) of this section.

(d) The commissioner is authorized and empowered to prescribe and, from time to time, to amend schedules of the amount of tax to be

collected upon each gallon of motor fuel and diesel motor fuel sold at retail and upon each gallon of such fuel subject to the tax required to be prepaid pursuant to section eleven hundred two of this article or upon each package of cigarettes sold at retail and upon each package of cigarettes subject to the tax required to be prepaid under section eleven hundred three of this article, as the commissioner shall determine is approximately equal to the average rate otherwise applicable, considering the regional average retail sales prices of such fuel, the amount of the prepaid tax per package of cigarettes in accordance with subdivision (j) of this section and, in the case of a sale at retail, the ordinary price ranges for such fuel and cigarettes, in lieu of the regular schedule based on total receipts. Such rates shall be uniform in each county but may vary as between counties, depending on the general price ranges in effect in each county, but counties wholly within a city shall have a uniform rate. If a political subdivision of a county imposes a retail sales and use tax, separate rates may be prescribed for it. Such schedules with reference to the tax required to be prepaid on motor fuel and diesel motor fuel pursuant to section eleven hundred two of this article or the tax required to be prepaid on cigarettes under section eleven hundred three of this article may fix the rate per gallon or per package of cigarettes in multiples of one-tenth of one cent, depending, in the case of such fuel, on the regional average retail sales prices where such fuel is, as the case may be, imported, manufactured, sold or used. Such schedules with reference to such fuel or cigarettes sold at retail may fix the rate per gallon or per package, as the case may be, in multiples of one-tenth of one cent depending on the price at which such fuel or cigarettes are sold. Where schedules fixing the rate per gallon in multiples of one-tenth of one cent have been promulgated, the price shown on any metered pump or other dispensing device from which such fuel is sold to a purchaser of such fuel, to be delivered directly to a vehicle propelled by any power other than muscular, shall include the tax at the rate so fixed, and the commissioner may by regulation prescribe the manner in which the amount of tax shall be shown for the information of customers by signs or placards on the premises where such fuel is sold. When determining tax required to be collected on the retail sale of motor fuel or diesel motor fuel or cigarettes, the receipts on which tax is computed shall

not include the amount of tax required to be prepaid pursuant to section eleven hundred two of this article with respect to such fuel or pursuant to section eleven hundred three of this article with respect to such cigarettes.

(e) (1) There are hereby created and established within the state three regions for purposes of the payment of the tax imposed by section eleven hundred two of this article. (i) the first region shall consist of the localities included in the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of the public authorities law, excluding all localities included in the counties of Nassau and Suffolk. (ii) The second region shall consist of the localities included in the counties of Nassau and Suffolk. (iii) The third region shall consist of the area of the state outside the regions referred to in subparagraphs (i) and (ii) of this paragraph.

(2) (i) Where the motor fuel is imported, manufactured or sold in, or diesel motor fuel is sold or used in the region referred to in subparagraph (i) of paragraph one of this subdivision, the tax required to be prepaid pursuant to section eleven hundred two of this article on each gallon of such fuel shall be sixteen cents.

(ii) Where motor fuel is imported, manufactured or sold in, or diesel motor fuel is sold or used in the region referred to in subparagraph (ii) of paragraph one of this subdivision, the tax required to be prepaid pursuant to section eleven hundred two of this article on each gallon of such fuel shall be sixteen cents.

(iii) Where motor fuel is imported, manufactured or sold in, or diesel motor fuel is sold or used in the region referred to in subparagraph (iii) of paragraph one of this subdivision, the tax required to be prepaid pursuant to section eleven hundred two of this article on each gallon of such fuel shall be fifteen cents.

(3) When a wholesaler of motor fuel sells motor fuel in a region, as defined in paragraph one of this subdivision, different from the region in which such motor fuel was purchased:

(i) if the region in which it sells the motor fuel has a higher prepaid rate as set forth in this subdivision than the region in which the wholesaler purchased the motor fuel in, the wholesaler shall pay to the department the difference in the rates for the gallonage sold.

(ii) if the region in which it sells the motor fuel has a lower prepaid rate as set forth in this subdivision than the region in which the wholesaler purchased the motor fuel, the wholesaler shall be entitled to a credit or refund for the difference in the rates for the gallonage sold.

(4) The commissioner is authorized to adjust the rates in paragraph two of this subdivision and shall prescribe a schedule of such rates for each region described in paragraph one of this subdivision as provided in this paragraph.

(i) The schedule required by this paragraph shall be reviewed semiannually during the months of April and October of each year, beginning in October, two thousand seventeen. The commissioner shall determine a tentative rate of tax that would be required to be prepaid pursuant to section eleven hundred two of this article on each gallon of motor fuel or diesel motor fuel sold or used by multiplying the regional average retail sales prices for such fuel for each region described in paragraph one of this subdivision by a number that is seventy-five percent of the average local sales tax rate in each such region and adding to the product thereof the taxes imposed by paragraphs one and two of subdivision (m) of this section. The regional average retail sales price shall be determined for purposes of this subdivision using data regarding sales prices, which shall include, but not be limited to, sales prices as compiled by government or industry surveys and sources, taking into consideration with respect to motor fuel, the volumes and prices of unleaded motor fuels, including reformulated or like motor fuels, sold in this state and with respect to both motor fuel and diesel motor fuel, the volume and prices of such fuels sold at full service and self-service pumps for such fuels, during an immediately preceding period of up to twelve months ending the last day of March in the case of the April semiannual review and ending the last day of September in the case of the October semiannual review; provided, however, that the regional average retail sales prices for both motor fuel and diesel motor fuel shall represent the retail sales prices upon which the tax under this article and pursuant to the authority of article twenty-nine of this chapter is computed (including all federal and state and any local taxes included in such price) for such period.

(ii) If upon such review, it is determined that the tentative rate of

tax that would be required to be prepaid for motor fuel or diesel motor fuel in any of the regions described in paragraph one of this subdivision would increase or decrease the rate for such region then in effect by two or more cents per gallon, the commissioner shall adjust such rate to be equal to the tentative rate, which shall take effect on the first day of June or the first day of December, respectively. Provided, however, the commissioner shall set the rate of tax required to be prepaid in the region described in subparagraph (ii) of paragraph one of this subdivision equal to the rate set forth in subparagraph (i) of such paragraph, unless the regional average retail sales price in the metropolitan commuter transportation district exceeds four dollars per gallon. In such event, the commissioner is authorized to establish a separate rate in the region described in such subparagraph (ii) and shall compute such rate by multiplying the regional average retail sales prices for motor fuel and diesel motor fuel in such region by a number that is eighty-five percent of the average local sales tax rate in such region and adding to the product thereof the taxes imposed by paragraphs one and two of subdivision (m) of this section.

(iii) The commissioner shall cause to be published on the department's website the schedule of rates and the regional average retail sales prices of motor fuel and diesel motor fuel fixed by this section, no later than ten days prior to the effective date of such rates. Notwithstanding any other provision of law, the calculation and publication of the rates so fixed by the provisions of this section shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(5) Where a new rate of tax required to be prepaid for motor fuel or diesel motor fuel is determined by the commissioner, (i) if such new rate is less than the rate then in effect, on the date the rate becomes effective (A) a registered distributor shall be entitled to a credit in an amount equal to the difference between the amount of the prepaid tax paid or incurred by him or her with respect to motor fuel which he or she imported and which he or she has in inventory at the time such new rate becomes effective and the amount of tax which would be due on such inventory if the prepaid tax were calculated based on such new average price for the region in which such motor fuel was imported and (B) such

inventory shall then be deemed to have been taxed based on the rate and all certifications of tax payment given by the distributor with respect to motor fuel in such inventory shall indicate a pass through of the prepaid tax based on such new price, (ii) if such new rate is greater than the existing rate, on the date such new rate becomes effective (A) such distributor shall become liable to pay an additional tax equal to the difference between the amount of tax which would be due with respect to motor fuel which he or she imported and which he or she has in inventory at the time such new rate becomes effective if the prepaid tax on such motor fuel were calculated based on such new average price for the region in which such motor fuel was imported and the amount of prepaid tax paid or actually incurred by such distributor with respect to such motor fuel and (B) such inventory shall then be deemed to have been taxed based on the new rate and all certifications of tax payment given by the distributor with respect to motor fuel in such inventory shall indicate a pass through of the prepaid tax based on such new rate. Such credit shall be allowed with respect to or such tax shall be paid with the return covering the month immediately preceding the month in which such new rate becomes effective. Any carryover credit may be applied to subsequent periods. The amount to be reported as additional tax shall be paid and disposed of in the same manner as the tax required to be prepaid by section eleven hundred two of this article. Such additional tax shall be determined, assessed, collected and enforced in the same manner as the tax required to be prepaid by section eleven hundred two of this article.

(f) The retail sales tax imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten, when computed in respect to a new mobile home, shall be computed on seventy percent of the receipts or consideration given therefor by the purchaser or user.

(g) The sale of race horses made through claiming races within the state, shall be subject to sales tax but only on such portions of the total purchase price that exceed the highest of any prior purchase prices paid for the same horse during the same calendar year within the state. Where no previous purchases have been made within a calendar year, the full purchase price shall be taxable. Officials of all race tracks in the state shall maintain and make available, upon reasonable

request, accurate and detailed lists of such sales.

(h) Receipts subject to tax under subdivision (a) of section eleven hundred five on retail sales of cigarettes and tobacco products and consideration given or contracted to be given for cigarettes and tobacco products the uses of which are subject to tax under section eleven hundred ten shall be deemed to include any tax imposed on cigarettes and tobacco products by article twenty of this chapter and any tax imposed on cigarettes by chapter thirteen of title eleven of the administrative code of the city of New York.

(i) (A) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of (1) a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, with a gross vehicle weight of ten thousand pounds or less, or (2) a vessel, as defined in section twenty-two hundred fifty of such law (including any inboard or outboard motor and any trailer, as defined in section one hundred fifty-six of such law, leased in conjunction with such a vessel), or an option to renew such a lease or a similar contractual provision, all receipts due or consideration given or contracted to be given for such property under and for the entire period of such lease, option to renew or similar provision, or combination of them, shall be deemed to have been paid or given and shall be subject to tax, and any such tax due shall be collected, as of the date of first payment under such lease, option to renew or similar provision, or combination of them, or as of the date of registration of such property with the commissioner of motor vehicles, whichever is earlier. Notwithstanding any inconsistent provisions of subdivision (b) of this section or of section eleven hundred seventeen of this article or of other law, for purposes of such a lease, option to renew or similar provision originally entered into outside this state, by a lessee (1) who was a resident of this state, and leased such property for use outside the state and who subsequently brings such property into this state for use here or (2) who was a nonresident and subsequently becomes a resident and brings the property into this state for use here, any remaining receipts due or consideration to be given after such lessee brings such property into this state shall be subject to tax as if the lessee had entered into or exercised such lease, option to renew or similar provision, or combination thereof, for the first

time in this state and the relevant provisions of sections eleven hundred ten concerning imposition and computation of tax, eleven hundred eighteen concerning exemption from use tax for tax paid to another jurisdiction, eleven hundred thirty-two concerning presumption of taxability and conditions for registration and eleven hundred thirty-nine concerning refunds, of this article, shall be applicable to any sales or compensating use tax paid by the lessee before the lessee brought the property into this state, except to the extent that any such provision is inconsistent with a provision of this subdivision. For purposes of this subdivision, (1) a lease for a term of one year or more shall include any lease for a shorter term which includes an option to renew or other like provision (or more than one of such option or other provision) where the cumulative period that the lease, with or without such option or provision, may be in effect upon exercise of such option or provision is one year or more and (2) receipts due and consideration given or contracted to be given under any such lease or other provision for excess mileage charges shall be subject to tax as and when paid or due.

(B) (1) Notwithstanding any inconsistent provisions of this subdivision, with respect to a lease of a motor vehicle described in paragraph (A) of this subdivision for a term of one year or more which includes an indeterminate number of options to renew or other similar contractual provisions or which includes thirty-six or more monthly options to renew beyond the initial term, and under which lease the lessee of such motor vehicle has certified in the writing described in clause (i) of subparagraph (C) of paragraph two of subsection (h) of section 7701 of the internal revenue code of 1986, under penalty of perjury, that the lessee intends that more than fifty percent of the use of such vehicle is to be in a trade or business of the lessee, all receipts due or consideration given or contracted to be given under such lease for the first thirty-two months, or the period of the initial term if greater, of such lease shall be deemed to have been paid or given and shall be subject to tax in accordance with the provisions of this subdivision.

For each such option to renew, or similar provision, or combination of them, exercised after the first thirty-two months, or the period of such

initial term, if longer, of any such lease, tax due under this article shall be collected and paid or paid over without regard to this subdivision.

(2) If at the termination of a lease described in subparagraph one of this paragraph the lessor refunds a portion of the receipt or consideration to the lessee as required by a terminal rental adjustment clause of such lease, either: (i) the lessee may claim a refund or credit for the sales tax it paid on such refunded receipt or consideration; or (ii) the lessor may claim a refund or credit of the sales tax paid by the lessee on such refunded receipt or consideration if it has demonstrated to the satisfaction of the commissioner that it first refunded such tax to the lessee. Notwithstanding the provisions of subdivision (c) of section eleven hundred thirty-nine of this article, such claim for refund or credit shall be considered timely if it is made within three years after the tax was paid by the lessor to the commissioner or one year after such receipt or consideration was refunded to the lessee, whichever is later; provided, however, that no interest shall be paid on a refund or credit made pursuant to this subparagraph.

(C) Any receipts due or consideration given or contracted to be given under an option to renew a lease of a motor vehicle described in this subdivision or similar contractual provision, or combination of them, exercised as part of any such lease between the same lessor and the same lessee with respect to the same motor vehicle or vehicles, where such lease or any option to renew such a lease or any other similar contractual provision was subject to tax in accordance with the provisions of this subdivision, shall not be subject to the tax imposed under the provisions of article twenty-eight-A of this chapter.

(j) (1) The tax required to be prepaid pursuant to section eleven hundred three of this article shall be computed by multiplying the base retail price by a tax rate of eight percent and rounding the result thereof to the nearest whole cent per package.

(2) For purposes of this subdivision, the base retail price shall mean for the period September first, nineteen hundred ninety-five, through August thirty-first, nineteen hundred ninety-six, one dollar for each package of cigarettes containing ten cigarettes or fraction thereof, and two dollars for each package of cigarettes containing twenty cigarettes

or fraction thereof in excess of ten and, if a package contains more than twenty cigarettes, the base retail price shall be increased by fifty cents for each five cigarettes or fraction thereof in excess of twenty. Effective for the twelve-month period commencing on the first day of September of each year, the base retail price for any such package shall be adjusted as follows: As soon as practicable after June first of each year, the base retail price in effect for the twelve-month period commencing on the immediately preceding September first shall be multiplied by a fraction, the numerator of which is the total of the sums of the manufacturers' list price for a carton of standard brand cigarettes containing ten packages of twenty cigarettes and the amount of cigarette tax imposed by subdivision one of section four hundred seventy-one of this chapter on such a carton of cigarettes, in effect on the first day of each month, for each of the twelve consecutive months ending with such month of June, and the denominator of which is the total of the sums of the manufacturers' list price for such a carton of cigarettes and the amount of cigarette tax imposed by subdivision one of section four hundred seventy-one of this chapter on such a carton of cigarettes, in effect on the first day of each month, for each of the twelve consecutive months ending with the month of June of the immediately preceding year. Provided, however, for purposes of the adjustment to any such base retail price required for the period commencing September first, two thousand two, the denominator shall be such total with respect to the twelve consecutive months ending with the month of June, nineteen hundred ninety-seven. The manufacturers' list price for a carton of standard brand cigarettes containing ten packages of twenty cigarettes in effect on the first day of a month shall be determined by calculating a weighted average of each of the major manufacturer's list prices for such a carton of cigarettes in effect on the first day of such month, as such list prices are reported to the department by such manufacturers, in the department's determination of the cost of cigarettes under article twenty-A of this chapter, and using the most recently published annual national market shares of such major manufacturers. The commissioner shall cause to be published in the section for miscellaneous notices in the state register, and give other appropriate general notice of, the base retail price adjustment calculation and the resulting base retail price fixed by this section

for the period commencing September first of each year beginning September first, nineteen hundred ninety-six, no later than the immediately preceding first day of August. The calculation and publication of the base retail price so fixed by provisions of this section shall not be included within the definition of "rule" as defined in paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act. The base retail prices determined pursuant to this paragraph shall be rounded to the nearest one-tenth of one cent for each package containing ten cigarettes or fraction thereof, for each package containing twenty cigarettes and, if packages are sold in excess of twenty cigarettes and stamps have been issued therefor, for each such package.

(k) Receipts subject to tax under subdivision (a) of section eleven hundred five of this article on retail sales of motor fuel, diesel motor fuel and residual petroleum product, and consideration given or contracted to be given for motor fuel, diesel motor fuel and residual petroleum product, the uses of which are subject to tax under section eleven hundred ten of this article, shall be deemed to include any tax imposed on or with respect to motor fuel, diesel motor fuel or residual petroleum product under article thirteen-A of this chapter.

(l) (1) Receipts from the sale of mobile telecommunications service provided by a home service provider shall include "charges for mobile telecommunications services." Such term shall mean any charge by a home service provider to its mobile telecommunications customer for (A) commercial mobile radio service, and shall include property and services that are ancillary to the provision of commercial mobile radio service (such as dial tone, voice service, directory information, call forwarding, caller-identification and call-waiting), and (B) any service and property provided therewith.

(2) With respect to services or property described in subparagraph (B) of paragraph one of this subdivision, internet access service, any mobile telecommunications service which the mobile telecommunications customer originates in a foreign country to the extent included in the fixed periodic charge, any interstate or international telephony or telegraphy or telephone or telegraph service of whatever nature which is not a voice service, and any property or service which is not telephony or telegraphy or telephone or telegraph service of whatever nature, a

home service provider shall collect and pay over tax, and a mobile telecommunications customer shall pay such tax, on receipts from any charge that is aggregated with and not separately stated from other charges for mobile telecommunications service. Provided, however, if such home service provider uses an objective, reasonable and verifiable standard for identifying each of the components of the charge for mobile telecommunications service, then such home service provider may separately account for and quantify the amount of each such component charge. If a home service provider chooses to so separately account for and quantify and separately sells any such property or service, then the charge for such property or service shall be based upon the price for such property or service as separately sold. If a home service provider chooses to so separately account for and quantify and does not separately sell such property or service, then the charge for such property or service shall be based upon the prevailing retail price of comparable property or service sold separately by other home service providers. In any case, the charge for such property or service shall be reasonable and proportionate to the total charge to the mobile telecommunications customer. Such charges for such services or property, as the case may be, will not constitute receipts from charges for mobile telecommunications services subject to tax under subdivision (b) of section eleven hundred five of this article. Nothing herein shall be construed to exempt from tax or subject to tax any such service or property otherwise subject to tax or exempt from tax under this article.

(3) (A) Any charge for a service or property billed by or for a mobile telecommunications customer's home service provider shall be deemed to be provided by such mobile telecommunications customer's home service provider.

(B) Charges for mobile telecommunications service that are provided or deemed to be provided by a mobile telecommunications customer's home service provider shall be sourced to the taxing jurisdiction where the mobile telecommunications customer's place of primary use is located, regardless of where the mobile telecommunications service originates, terminates or passes through.

(m) Notwithstanding any provision of law to the contrary:

(1) The sales tax imposed by subdivision (a) of section eleven hundred five of this article and the compensating use tax imposed by section

eleven hundred ten of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be eight cents per gallon.

(2) The sales and compensating use taxes imposed by subdivision (a) of section eleven hundred nine of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be three-quarters of one cent per gallon.

(3) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by subdivision (a) of section eleven hundred seven of this article in regard to retail sales of motor fuel and diesel motor fuel. However, the legislative body of a city in which the taxes imposed by such section eleven hundred seven are in effect, by local law, ordinance, or resolution in exactly the form prepared by the commissioner, may elect that such taxes, in regard to retail sales of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two or three dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

(4) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by a local law, ordinance or resolution of a municipality pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, in regard to retail sales of motor fuel and diesel motor fuel. The legislative body of such a municipality, by local law, ordinance or resolution in exactly the form prepared by the commissioner, may elect that its sales and compensating use taxes, in regard to the retail sale of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two, three or four dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

(5)(i) Prior to the start of any sales tax quarter, the commissioner shall apply the local percentage sales tax rate of each county or city that has elected a cents per gallon rate pursuant to paragraph three or four of this subdivision to the average price of motor fuel and diesel motor fuel, not including sales tax and the motor fuel excise tax, for three consecutive months beginning four months prior to the start of any sales tax quarter. If the result of this computation is less than the elected cents per gallon rate for a county or city, the cents per gallon

rate for such county or city shall be adjusted to be equal to such computation, rounded to the nearest one cent. Such rates shall be published by the commissioner and effective in the next succeeding sales tax quarter.

(ii) Prior to the start of any sales tax quarter, the commissioner shall also adjust in a like manner the cents per gallon rates prescribed by paragraphs one and two of this subdivision based on percentage sales tax rates of four percent and three-eighths of a percent respectively. Provided, however, adjustments made to the cents per gallon rate prescribed by paragraph two of this subdivision shall be rounded to the nearest one-tenth of one cent.

(6) A local law, ordinance or resolution making or revoking the election made pursuant to paragraph three or four of this subdivision must go into effect in accordance with the provisions of subdivisions (d) and (e) of section twelve hundred ten of this chapter.

(7) Notwithstanding any foregoing provision of this subdivision or other law to the contrary, this subdivision, subdivision (h) of section eleven hundred nine of this part and subdivision (n) of section eighteen hundred seventeen of this chapter, section three hundred ninety-two-i of the general business law and other provisions of law which refer or relate to this subdivision shall apply only to (A) motor fuel or diesel motor fuel sold for use directly and exclusively in the engine of a motor vehicle and (B) motor fuel or diesel motor fuel, other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons, sold by a retail gas station. For purposes of this subdivision and such other provisions of law, "retail gas station" shall mean a filling station where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle or where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of such vessel. The commissioner is hereby authorized to require the use of certificates or other documents, and procedures related thereto, to effect the purposes of this subdivision; and any such certificate or other document so required by the commissioner for a purchaser to tender to a vendor to purchase such fuel subject to tax on the reduced base established by or

pursuant to this subdivision is hereby deemed to be an exemption certificate as such term is used in subdivision (c) of section eleven hundred thirty-two of this article and as if the provisions of such subdivision (c) referred to such a certificate or document required pursuant to this subdivision.

* (n) The sales and compensating use taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter on B20 shall be imposed at eighty percent of the rate of the cents per gallon taxes described in subdivision (m) of this section. However, if a county or city does not make the cents per gallon election authorized by such subdivision (m), the taxes of such county or city imposed pursuant to the authority of such article twenty-nine or the taxes imposed in a city of one million or more by section eleven hundred seven of this article shall be imposed on eighty percent of the receipts from the retail sale of or the consideration given or contracted to be given for, or for the use of, such B20.

* NB Repealed September 1, 2031

(o) (1) If a transportation service subject to tax under paragraph ten of subdivision (c) of section eleven hundred five of this part is provided by vehicle, and the owner or lessor of the vehicle leases or rents the vehicle to an unrelated person who provides the transportation service, such as a limousine driver who drives a limousine owned by another person, then (i) the owner or lessor is deemed to provide the transportation service during the day or other period that the unrelated person uses the vehicle to provide the service, (ii) the owner or lessor is deemed to be the vendor of the service provided by the unrelated person, (iii) the tax imposed by such paragraph ten is deemed to be imposed on the unrelated person, (iv) the owner or lessor, as vendor, must collect the tax from the unrelated person, based on the local jurisdiction where the driver takes delivery of the vehicle and pay over such tax required to be collected with its returns required to be filed under this article, and (v) the receipts subject to the tax equal two hundred percent of the amount that the owner or lessor charges the unrelated person for the use of the vehicle during the day or other period, including any charge related to insurance, maintenance, repairs, fuel, the use, rental or economic value of any vehicle or business license, and any other charge made by the owner or lessor to the

unrelated person for the day or other period, regardless of whether the unrelated person transported, carried or conveyed any person or earned any fares with that vehicle during that day or other period.

(2) Notwithstanding any law to the contrary:

(i) Any municipality or public corporation that establishes or regulates black car, limousine or other vehicle service fares must adjust those fares to include therein the tax imposed by paragraph ten of subdivision (c) of section eleven hundred five of this part and the taxes imposed by other sections of this part and pursuant to the authority of article twenty-nine of this chapter on the services taxed by such paragraph ten and must require that any meters or other devices in the vehicles or otherwise that measure fares be adjusted to include these taxes, as the same are from time to time imposed and as the rates of those taxes may change.

(ii) Any person that sells the services described in paragraph one of this subdivision must adjust any meters or other devices in the vehicles or otherwise that measure fares so that they timely reflect any change in the rates of the taxes described in subparagraph (i) of this paragraph. Neither the failure of a municipal or other public corporation to adjust fares nor the failure of any person to adjust the meters or devices will relieve any person from the obligation to collect and pay or pay over such taxes timely, at the correct combined rate.

(3) For purposes of this subdivision, "unrelated person" means a person other than a related person as defined for purposes of section fourteen of this chapter.

(p) Notwithstanding any contrary provision of law: (1) The sales tax imposed by subdivision (a) of section eleven hundred five of this part on receipts from the retail sale of a new modular home module shall be computed on the sum of (i) sixty percent of the vendor's receipts from the sale of the module, excluding any charges by the vendor to the purchaser for shipping or delivery, as described in paragraph three of subdivision (b) of section eleven hundred one of this article and (ii) one hundred percent of any charges by the vendor to the purchaser for shipping or delivery of the modules as described in such paragraph three of subdivision (b) of section eleven hundred one.

(2) The compensating use tax imposed by clause (A) of subdivision (a) of section eleven hundred ten of this part on the use of a new modular

home module by its purchaser shall be computed on the sum of (i) sixty percent of the amount described in subdivision (b) of such section eleven hundred ten, excluding any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this article, and (ii) one hundred percent of any charges for shipping or delivery as described in such paragraph three of subdivision (b) of section eleven hundred one.

(3) The compensating use tax imposed by subclause (i) or (ii) of clause (B) of subdivision (a) of section eleven hundred ten of this part on the use of modular home modules by their manufacturer to be installed at a building site to construct a modular home that constitutes a capital improvement shall be computed on the sum of (i) sixty percent of the consideration for which the manufacturer conveys those modules to the modular home buyer on an installed basis, excluding any consideration for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this article, and excluding the consideration for the installation of those modules at the building site as a modular home if such installation charge is reasonable and stated separately from every other charge, and (ii) one hundred percent of any charges for shipping or delivery as described in such paragraph three of subdivision (b) of section eleven hundred one.

(q) (1) The exclusions from the definition of retail sale in subparagraph (iv) of paragraph four of subdivision (b) of section eleven hundred one of this article shall not apply to transfers, distributions, or contributions of a vessel, except where, in the case of the exclusion in subclause (I) of clause (A) of such subparagraph (iv), the two corporations to be merged or consolidated are not affiliated persons with respect to each other. For purposes of this subdivision, corporations are affiliated persons with respect to each other where (i) more than five percent of their combined shares are owned by members of the same family, as defined by paragraph four of subsection (c) of section two hundred sixty-seven of the internal revenue code of nineteen hundred eighty-six; (ii) one of the corporations has an ownership interest of more than five percent, whether direct or indirect, in the other; or (iii) another person or a group of other persons that are affiliated persons with respect to each other hold an ownership interest of more than five percent, whether direct or indirect, in each of the

corporations.

(2) Notwithstanding any contrary provision of law, in relation to any transfer, distribution, or contribution of a vessel that qualifies as a retail sale as a result of paragraph one of this subdivision, the sales tax imposed by subdivision (a) of section eleven hundred five of this part shall be computed based on the price at which the seller purchased the tangible personal property, provided that where the seller or purchaser affirmatively shows that the seller owned the property for six months prior to making the transfer, distribution or contribution covered by paragraph one of this subdivision, such vessel shall be taxed on the basis of the current market value of the vessel at the time of that transfer, distribution, or contribution. For the purposes of the prior sentence, "current market value" shall not exceed the cost of the vessel. See subdivision (b) of this section for a similar rule on the computation of any compensating use tax due under section eleven hundred ten of this part on such transfers, distributions, or contributions.

(3) A purchaser of a vessel covered by paragraph one of this subdivision will be entitled to a refund or credit against the sales or compensating use tax due as a result of a transfer, distribution, or contribution of such vessel in the amount of any sales or use tax paid to this state or any other state on the seller's purchase or use of the vessel so transferred, distributed or contributed, but not to exceed the tax due on the transfer, distribution, or contribution of the vessel or on the purchaser's use in the state of the vessel so transferred, distributed or contributed. An application for a refund or credit under this subdivision must be filed and shall be in such form as the commissioner may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time the application for credit is filed. However, the taking of the credit on the return shall be deemed to be part of the application for credit. Provided that the commissioner may, in his or her discretion and notwithstanding any other law, waive the application requirement for any or all classes of persons where the amount of the credit or refund is equal to the amount of the tax due from the purchaser. The provisions of subdivisions (a), (b), and (c) of section eleven hundred thirty-nine of this article shall apply to applications for refund or credit under this

subdivision. No interest shall be allowed or paid on any refund made or credit allowed under this subdivision. If a refund is granted or a credit allowed under this paragraph, the seller or purchaser shall not be eligible for a refund or credit pursuant to subdivision seven of section eleven hundred eighteen of this article with regard to the same purchase or use.

(r) (1) In regard to the collection of sales tax on occupancies by room remarketers, when occupancy is provided for a single consideration with property, services, amusement charges, or any other items, whether or not such other items are taxable, the rent portion of the consideration for such transaction shall be computed as follows: either the total consideration received by the room remarketer multiplied by a fraction, the numerator of which shall be the consideration payable for the occupancy by the room remarketer and the denominator of which shall be such consideration payable for the occupancy plus the consideration payable by the remarketer for the other items being sold, or by any other method as may be authorized by the commissioner. If the room remarketer fails to separately state the tax on the rent so computed on a sales slip, invoice, receipt, or other statement given to the occupant in the manner prescribed by paragraph two of this subdivision or fails to maintain records of the prices of all components of a transaction covered by this paragraph, the entire consideration shall be treated as rent subject to tax under paragraph one of subdivision (e) of section eleven hundred five of this part. Nothing herein shall be construed to subject to tax or exempt from tax any service or property or amusement charge or other items otherwise subject to tax or exempt from tax under this article or pursuant to the authority of article twenty-nine of this chapter. A room remarketer's records of the consideration payable for all components of a transaction covered by this paragraph are records required to be maintained for purposes of subdivision (a) of section eleven hundred thirty-five of this article.

(2) In regard to the collection of sales tax on occupancies by room remarketers, including a transaction described in paragraph one of this subdivision, the requirements of the second sentence of paragraph one of subdivision (a) of section eleven hundred thirty-two of this article shall be deemed satisfied if the remarketer gives the customer a sales slip, invoice, receipt, or other statement of the price ("invoice")

prior to the customer's completion of his or her occupancy, on which the amount of tax due under this article and pursuant to the authority of article twenty-nine of this chapter is stated. The room remarketer must keep either a copy of the invoice as required by subdivision (a) of section eleven hundred thirty-five of this article, or electronic records that accurately reflect the information that is on the invoice provided to the customer.

(3) In regard to the reporting and the payment to the commissioner by room remarketers of sales tax due on occupancies, subdivision (a) of section eleven hundred thirty-seven of this article shall be read to require a room remarketer to report such sales tax due, including in regard to a transaction described in paragraph one of this subdivision, on the return due for the filing period in which the occupancy ends and, at the time of filing such return, to pay to the commissioner the total amount described by such subdivision (a).

§ 1112. Taxes imposed on qualified Indian reservations. (a) Where property or services subject to sales or compensating use tax have been purchased on or from a qualified Indian reservation, as defined in section four hundred seventy of this chapter, the purchaser shall not be relieved of his or her liability to pay the tax due. Such tax due and not collected shall be paid by the purchaser directly to the department.

(b) The tax due and not collected pursuant to subdivision (a) of this section may be reported and paid by means of such personal income tax forms or other tax forms as the commissioner deems appropriate.

(c) The provisions of section two hundred eighty-four-e of this chapter concerning sales of motor fuel and Diesel motor fuel on qualified Indian reservations shall apply to the prepayment of sales tax imposed on motor fuel and Diesel motor fuel pursuant to section eleven hundred two of this article in the same manner and with the same force and effect as if the provisions of such section two hundred eighty-four-e had been incorporated in full into this article, except to the extent that any such provision is either inconsistent with a provision of such section eleven hundred two or not relevant thereto.

(d) The provisions of section four hundred seventy-one-e of this chapter concerning sales of cigarettes on qualified Indian reservations

shall apply to the prepayment of sales tax imposed on cigarettes pursuant to section eleven hundred three of this article in the same manner and with the same force and effect as if the provisions of such section four hundred seventy-one-e had been incorporated in full into this article, except to the extent that any such provision is either inconsistent with a provision of such section eleven hundred three or is not relevant thereto.

PART III-EXEMPTIONS

§ 1115. Exemptions from sales and use taxes. (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(1) (A) Food, food products, beverages, dietary foods and health supplements, sold for human consumption but not including (i) candy and confectionery, (ii) fruit drinks which contain less than seventy percent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa) and (iv) beer, wine or other alcoholic beverages, all of which shall be subject to the retail sales and compensating use taxes, whether or not the item is sold in liquid form. Nothing in this subparagraph shall be construed as exempting food or drink from the tax imposed under subdivision (d) of section eleven hundred five of this article.

(B) Until May thirty-first, two thousand twenty-nine, the food and drink excluded from the exemption provided by clauses (i), (ii) and (iii) of subparagraph (A) of this paragraph, and bottled water, shall be exempt under this subparagraph: (i) when sold for one dollar and fifty cents or less through any vending machine that accepts coin or currency only; or (ii) when sold for two dollars or less through any vending machine that accepts any form of payment other than coin or currency, whether or not it also accepts coin or currency.

(2) Water, when delivered to the consumer through mains or pipes.

(3) Drugs and medicines intended for use, internally or externally, in

the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

(3-a) Menstrual products, including, but not limited to, pads, tampons and panty liners.

(3-b) Adult-use cannabis products as defined by article twenty-C of this chapter.

(4) Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.

(5) Newspapers and periodicals.

(6) (A) Tangible personal property, whether or not incorporated in a building or structure, for use or consumption predominantly either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both.

(B) With respect to the exemption of motor vehicles under this paragraph, (i) use of a motor vehicle either in the production phase of farming or in a commercial horse boarding operation, or in both, shall be defined as any use of the motor vehicle on property either farmed or used in a commercial horse boarding operation, or both, by the motor vehicle purchaser or user or in direct and uninterrupted trips between properties farmed or used in such operation, or both, by the motor vehicle purchaser or user, and (ii) "predominantly" shall mean that more than fifty percent of the motor vehicle's use is either in the production phase of farming or in a commercial horse boarding operation, or in both. The percentage of such vehicle's use either in the production phase of farming or in a commercial horse boarding operation, or in both, may be computed either on the basis of mileage or hours of use, at the discretion of the motor vehicle purchaser or user. A person may purchase a motor vehicle qualifying for exemption under this paragraph without payment of tax imposed by section eleven hundred five

or eleven hundred ten of this article by furnishing the vendor a properly completed exemption certificate promulgated by the commissioner; and such purchaser may register such vehicle or apply for a certificate of title for such vehicle with the commissioner of motor vehicles or a county clerk, without payment of such taxes, by furnishing such a properly completed certificate to such commissioner or clerk.

(7) Tangible personal property sold by a mortician, undertaker or funeral director. However, all tangible personal property sold to a mortician, undertaker or funeral director for use in the conducting of funerals shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one of this chapter and shall not be exempt from the retail sales tax.

(8) Commercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship).

(9) Fuel sold to an air line for use in its airplanes.

(10) Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

(11) The flags of the United States of America and the state of New York.

(11-a) Any military decorations, including but not limited to, ribbons, medals, mini-medals, and lapel pins, when sold to a purchaser: (i) who is a veteran of the United States provided that the purchaser shall present to the vendor proof in the form of discharge papers, or other official documentation, of his or her veteran status; or (ii) who is an active member of the military provided that the purchaser shall present to the vendor proof or other official documentation of actual military service.

(11-b) Military service flags, prisoner of war flags and blue star banners.

(12) Machinery or equipment for use or consumption directly and

predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment. This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas, and solution mining activities to the point of sale to the first commercial purchaser.

(12-a) Tangible personal property for use or consumption directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of telecommunications services for sale or internet access services for sale or any combination thereof. Such tangible personal property exempt under this subdivision shall include, but not be limited to, tangible personal property used or consumed to upgrade systems to allow for the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of telecommunications services for sale or internet access services for sale or any combination thereof. As used in this paragraph, the term "telecommunications services" shall have the same meaning as defined in paragraph (g) of subdivision one of section one hundred eighty-six-e of this chapter.

* (12-b) (i) Machinery, equipment or apparatus used or consumed directly and predominantly to upgrade cable television systems to allow for the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of digital cable television service for sale, including parts with a useful life of one year or less and tools or supplies used in connection with such machinery, equipment or apparatus; and (ii) to the extent not otherwise exempt, equipment or apparatus, sold to an entity principally engaged in furnishing cable television service for sale, for use or consumption directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of internet access service for sale, including parts with a useful life of one year or less and tools and supplies used in connection with such equipment or apparatus. As used in this paragraph,

the term "digital cable television service" shall mean cable television service, as defined in subparagraph two of paragraph (b) of subdivision two of section one hundred eighty-six-e of this chapter, transmitted by the use of digital technology; and the term "internet access service" shall mean such term as defined in subdivision (v) of this section.

* NB Expired September 1, 2003

13. Tangible personal property sold through coin operated vending machines at ten cents or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the state tax commission.

(13-a) Tangible personal property sold through coin operated bulk vending machines at fifty cents or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the commissioner. As used in this paragraph, "bulk vending machine" means a vending machine, containing unsorted merchandise, which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer.

(13-b) Temporary transportation devices sold through coin-operated equipment, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the commissioner. As used in this paragraph, "temporary transportation device" means an instrument of transport used for a limited period of time for the purpose of carrying luggage or merchandise a short distance within a facility of embarkation/disembarkation or a facility where such merchandise was purchased.

(14) Motor vehicles, as such term is defined in section one hundred twenty-five of the vehicle and traffic law, sold by a husband or wife to his or her spouse, or by a parent to his or her child, or by a child to his or her parent. Provided, however, this exemption shall not apply if the vendor is a dealer as defined in section four hundred fifteen of the vehicle and traffic law.

(14-a) Motor vehicles, as such term is defined in section one hundred twenty-five of the vehicle and traffic law, upon registration of such motor vehicle if such motor vehicle was purchased in another state by a person while he or she was in the military service of the United States

upon the return of such person to this state, as long as he or she has proof of payment, whether made by the seller or purchaser, in another state of one or more of the following taxes on such motor vehicle: sales, use, excise, usage, or a highway use tax necessary to obtain title.

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen or (B) used predominantly either in the production phase of farming or in a commercial horse boarding operation, or in both, or (ii) adding to, altering or improving real property, property or land (A) of such an organization or (B) used predominantly either in the production phase of farming or in a commercial horse boarding operation, or in both, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land (i) of an organization described in subdivision (a) of section eleven hundred sixteen or (ii) used predominantly either in the production phase of farming or in a commercial horse boarding operation, or in both, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(17) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property; provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph.

(18) Tangible personal property sold by a person at his residence

provided such person or any member of his household does not conduct a trade or business in which similar items are sold, and the receipts from such sales can reasonably be expected not to exceed six hundred dollars in a calendar year. If such person reasonably expects that his receipts from such sales will not exceed six hundred dollars in a calendar year, but such receipts do exceed such sum, the exemption provided for in this paragraph will apply but only to the first six hundred dollars of receipts in such calendar year. Provided, however, where a person sixteen years of age or older has engaged in such sales for three days in a calendar year, the exemption provided for in this paragraph shall not apply to subsequent sales in that calendar year. The exemption provided for in this paragraph shall also not apply to (A) sales at a private residence conducted by an auctioneer, sheriff or other third party, (B) a sale held to liquidate an estate or (C) the sale of boats, snowmobiles or motor vehicles except such sales of motor vehicles within the exemptions of paragraph fourteen of subdivision (a) of this section.

(18-a) Tangible personal property manufactured and sold by a veteran, as defined in section twenty-two of the veterans' services law, for the benefit of a veteran's service organization, provided that such person or any member of his or her household does not conduct a trade or business in which similar items are sold, the first two thousand five hundred dollars of receipts from such sales in a calendar year.

(19) Cartons, containers, and wrapping and packaging materials and supplies, and components thereof for use and consumption by a vendor in packaging or packing tangible personal property for sale, and actually transferred by the vendor to the purchaser.

(19-a) Milk crates purchased by a dairy farmer or New York state licensed milk distributor and used exclusively and directly for the packaging and delivery of milk and milk products to customers.

(20) Paper, ink and any other tangible personal property purchased for use in the publication of a shopping paper, as such term is defined in and limited by subdivision (i) of this section, which is to become a physical component part of such paper.

(21) Commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by

commercial airlines.

(21-a) General aviation aircraft, and machinery or equipment to be installed on such aircraft. For purposes of this subdivision, "general aviation aircraft" means an aircraft that is used in civil aviation, that is not a commercial aircraft as defined in paragraph seventeen of subdivision (b) of section eleven hundred one of this article, military aircraft, unmanned aerial vehicle or drone.

(22) The rental or lease of trucks, tractors or tractor-trailer combinations to an authorized carrier, pursuant to a written contractual agreement, for use in the transportation for hire of tangible personal property as augmenting equipment by such authorized carrier, provided that under such rental, lease or license to use, the owner of any such vehicle or any employee of such owner operates such vehicle. For purposes of this paragraph, the term "authorized carrier" shall have the same meaning given that term in subpart-A of part ten hundred fifty-seven of title forty-nine of the code of federal regulations and in part eight hundred forty-five of title seventeen of the codes, rules and regulations of the state of New York, as the case may be, and the term "augmenting equipment" shall have the same meaning given that term in such part of such title of the codes, rules and regulations of the state of New York.

(23) Used mobile homes.

(24) Fishing vessels used directly and predominantly in the harvesting of fish for sale, and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs. For the purpose of this paragraph the term fishing vessel shall not include any vessel used predominantly for sport fishing purposes.

(25) Natural gas used for personal residence consumption by a land owner from, or provided in exchange for gas from, a natural gas well located on property owned by such land owner, such gas having been set aside for the property owner's use by lease.

(26) Tractors, trailers or semi-trailers, as such terms are defined in article one of the vehicle and traffic law, and property installed on such vehicles for their equipping, maintenance or repair, provided such vehicle is used in combination where the gross vehicle weight of such combination exceeds twenty-six thousand pounds.

(27) Precious metal bullion sold for investment, provided that (i) the

retailer, if so required, is registered pursuant to section three hundred fifty-nine-e of the general business law and (ii) the receipt or consideration given or contracted to be given for such bullion depends only on the value of the metal content of such bullion. "Precious metal bullion" means bars, ingots or coins of gold, silver, platinum, palladium, rhodium, ruthenium or iridium, but shall not include bars, ingots or coins which have been manufactured, processed, assembled, fabricated or used for an industrial, professional, esthetic or artistic purpose. Precious metal bullion shall be deemed to be sold for investment when it is sold for more than one thousand dollars and the purchaser or user or agent of either of them holds it in the same form as when it was purchased and does not manufacture, process, assemble or fabricate such bullion for its own use. For purposes of this paragraph, the receipt or consideration given or contracted to be given shall be deemed to depend only on the value of the metal content if, at the time of sale or purchase at retail, such receipt or consideration does not exceed (i) one hundred forty percent, with respect to silver coins, or (ii) one hundred twenty percent, with respect to gold coins weighing one-quarter of an ounce or less, or (iii) one hundred fifteen percent, with respect to other coins, of the greater of (A) the daily closing bullion cash price of such metal in the open market or (B) the coins' face value at prevailing rates of exchange, or (iv), with respect to bars and ingots, one hundred fifteen percent of such bullion cash price of such metal. Where there is no such closing price for such metal, the average of the bid and asked cash prices shall be substituted for such closing price.

(28) Computer software designed and developed by the author or creator to the specifications of a specific purchaser which is transferred directly or indirectly to a corporation which is a member of an affiliated group of corporations within the meaning of subparagraph six of paragraph (b) of subdivision seventeen of section two hundred eight of this chapter except for clauses (ii) and (iii) of such subparagraph that includes such purchaser, or to a partnership in which such purchaser and other members of such affiliated group have at least a fifty percent capital or profits interest (but only if the transfer is not in pursuance of a plan having as its principal purpose the avoidance or evasion of tax under this article), but in no case including computer

software which is pre-written, as defined in paragraph six of subdivision (b) of section eleven hundred one of this article and available to be sold to customers in the ordinary course of the seller's business.

(29) a horse which is a racehorse registered with the jockey club, the United States trotting association or the national steeplechase and hunt association (or such a horse during the first twenty-four months of its life if it is eligible to be so registered) which is purchased or used with the intent that it shall be entered in an event on which pari-mutuel wagering is authorized by law, except that the exemption provided for under this paragraph shall not apply to any such horse which is considered to be at least four years old and has never raced in an event on which pari-mutuel wagering is authorized by law. Provided, further, the purchaser of such a racehorse must give to the seller a certification containing such information as the commissioner of taxation and finance shall require, which shall include a statement to the effect that the purchaser intends to enter such horse in events on which pari-mutuel wagering is authorized by law. Such certification shall be retained by such seller, together with documentary proof of the age of such horse, for a three-year period. The provisions of this paragraph shall apply to all sales and uses of racehorses occurring on and after June first, nineteen hundred ninety-four.

(30) Clothing and footwear for which the receipt or consideration given or contracted to be given is less than one hundred ten dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing.

(30-a) Diapers intended for human use including, but not limited to: disposable, reusable, adult, and children's diapers.

* (31) Copies sold through coin operated photocopying machines at fifty cents or less. As used in this paragraph, "photocopying machine" means a vending machine which, upon insertion of a coin, copies a document for a purchaser.

* NB There are 2 par. (31)'s

* (31) Enhanced emissions inspection equipment, certified by the department of environmental conservation, pursuant to regulations promulgated by such department, for use in an enhanced emissions

inspection and maintenance program as required by the federal clean air act of 1990, as amended in nineteen hundred ninety(42 U.S.C. 7401 et seq.) and the New York state clean air compliance act enacted by chapter 608 of the laws of 1993, where such equipment is purchased and used by an official inspection station licensed by the commissioner of motor vehicles under article five of the vehicle and traffic law and authorized to conduct the enhanced emission inspections required by such federal act.

* NB There are 2 par. (31)'s

(32) Omnibuses, as such term is defined in article one of the vehicle and traffic law, weighing at least twenty-six thousand pounds and measuring at least forty feet in length and parts, equipment and lubricants purchased and used in their operation, provided such omnibuses are used to transport persons for hire by a carrier operating pursuant to a certificate of authority issued by the New York state commissioner of transportation or by an appropriate agency of the United States. Where receipts from the sale of or consideration given or contracted to be given for the purchase of an omnibus or other property has been exempted under this paragraph, such receipts or consideration shall not also qualify for the refund or credit described in subdivision (b) of section eleven hundred nineteen of this article; where any or all of the tax on receipts from the sale of or consideration given or contracted to be given for the purchase of an omnibus or other property has been refunded or credited under such subdivision (b), no part of such receipts or consideration shall be exempt under this paragraph. Nothing in this paragraph shall be construed to affect the refund or credit under subdivision (b) of such section eleven hundred nineteen with respect to the purchase or use of motor fuel or diesel motor fuel.

(33) Wine or wine product, beer or beer product, cider or cider product, liquor or liquor product, mead or mead product, and the kegs, cans, bottles, growlers, corks, caps, and labels used to package such alcoholic product, furnished by the official agent of a farm winery, winery, brewery, farm brewery, cider producer, farm cidery, distillery, farm distillery, mead producer, farm meadery, wholesaler, or importer at a tasting held in accordance with the alcoholic beverage control law to a customer or prospective customer who consumes such wine, beer, cider, liquor or mead at such tasting.

(34) Textbooks purchased by full and part time college students for their courses; provided, however, that upon purchase such a student shall present a valid student identification card, and such a textbook shall be required for a course being taken by such student at an institution of higher education. For purposes of this subdivision the term:

(i) "Textbooks" includes only those books specifically written, designed or produced for educational, instructional or pedagogical purposes.

(ii) "Institution of higher education" shall mean any institution of higher education, recognized and approved by the regents of the university of the state of New York or accredited by a nationally recognized accrediting agency or association accepted as such by the regents of the university of the state of New York, which provides a course of study leading to the granting of a post-secondary degree, certificate or diploma.

(35) Computer system hardware used or consumed directly and predominantly in designing and developing computer software for sale or in providing the service, for sale, of designing and developing internet websites.

(36) Parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.

(37) (i) Machinery, equipment and other tangible personal property specified herein, sold to a person operating an internet data center located in this state for use in such a center, where such property: (A) will be located or installed in a facility or structure which is an internet data center and (B) is required for and directly related to the provision of internet website services for sale by the operator of the center. Such property shall include computer system hardware including servers and routers, computer software, storage racks and cages for computer equipment, interior fiber optic and copper cables, property required to maintain the appropriate climate controlled environment for the property in the internet data center such as air filtration and air conditioning equipment and vapor barriers, property related to fire control such as fire suppression equipment and alarms, power generators,

power conditioners, property related to providing a secure environment such as protective barriers, property which when installed in such facility or structure will constitute raised flooring and other similar property. For purposes of this paragraph the operator of an internet data center is a person (A) operating a facility which consists of a data center specifically designed and constructed to provide a high security environment for the location of servers and similar equipment on which reside internet websites; and (B) providing at such facility the internet website services of: (I) uninterrupted internet access to its customers' web pages in a secure environment and (II) continuous internet traffic management for its customers' web pages.

(ii) For purposes of this paragraph, an operator of an internet data center, primarily engaged in the sale from such center of internet access services exempt from tax under subdivision (v) of this section, is not providing internet website services for sale. Primarily engaged shall mean that more than fifty percent of the use of all the machinery, equipment and other specified property in any such center, which would otherwise be exempt under this paragraph, is for the rendition of such internet access services.

(iii) Receipts from the retail sale of the tangible personal property exempt pursuant to subparagraph (i) of this paragraph if purchased by an operator of an internet data center, shall be exempt when purchased by a contractor, subcontractor or repairman for use as described in such subparagraph (i), where such property is to become a capital improvement to real property.

(iv) In order to receive the exemption provided for under this paragraph or subdivision (y) of this section, the operator of the internet data center or the contractor, subcontractor or repairman shall furnish to the vendor of the exempt property or services a certificate in such form and containing such information as may be prescribed by the commissioner.

(38) (A) Machinery or equipment or other tangible personal property (including parts, tools and supplies) for use or consumption by a broadcaster directly and predominantly in the production (including post-production) of live or recorded programs which are used or consumed by a broadcaster predominantly for the purpose of broadcast over-the-air by such broadcaster or transmission through a cable television or direct

broadcast satellite system by such broadcaster. Tangible personal property, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the production (including post-production) of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(B) Machinery or equipment or other tangible personal property (including parts, tools and supplies) for use or consumption by a broadcaster directly and predominantly in the transmission of live or recorded programs over-the-air or through a cable television or direct broadcast satellite system by such broadcaster. Tangible personal property, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the transmission of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(C) For purposes of this paragraph: (i) the term "broadcaster" means a television or radio station licensed by the federal communications commission, a television or radio broadcast network or a cable television network. The term "television or radio broadcast network" means an organization which produces and/or purchases programs intended for transmission by affiliated television or radio stations licensed by the federal communications commission and which has distribution facilities or circuits available to such affiliated stations during all or some portion of one or more days during each week. The term "cable television network" means an organization which produces and/or purchases programs intended for transmission either by direct broadcast satellite systems or by cable systems pursuant to an affiliation or similar agreement and which has distribution facilities or circuits available to such direct broadcast satellite systems or such cable systems during all or some portion of one or more days during each week. For the purpose of subparagraph (B) of this paragraph, the term "broadcaster" shall not include cable system operators and direct broadcast satellite system operators. Provided, however, for the purpose of subparagraph (A) of this paragraph, such term shall also include a

cable system operator or a direct broadcast satellite system operator solely with respect to machinery or equipment or other tangible personal property (including parts, tools and supplies) for use or consumption by it directly and predominantly in the production (including post-production) of live or recorded programs intended for transmission to its viewers over its system; (ii) the term "programs" means any performance, event, play, story or literary, musical, artistic or other work used for entertainment or educational purposes, including but not limited to news, news specials, sporting events, game shows, talk shows and commercials; and (iii) the term "recorded programs" means any program contained on any medium.

(39) Tangible personal property for use or consumption directly and predominantly in the production, including editing, dubbing and mixing, of a film for sale regardless of the medium by means of which the film is conveyed to a purchaser. For purposes of this paragraph, the term "film" means feature films, documentary films, shorts, television films, television commercials and similar productions.

(40) Machinery or equipment for use or consumption directly and predominantly in the control, prevention, or abatement of pollution or contaminants from manufacturing or industrial facilities, to the extent such machinery or equipment is not otherwise exempt under paragraph twelve of this subdivision.

(41) machinery and equipment for use directly and predominantly in loading, unloading and handling cargo at a marine terminal facility located in a city with a population of one million or more which in two thousand three, handled more than three hundred fifty thousand twenty-foot equivalent units (TEUs). For the purpose of this section the term twenty-foot equivalent unit (TEU) is used to express the relative number of containers based on the equivalent length of a twenty-foot container.

* (42) E85, CNG or hydrogen, for use or consumption directly and exclusively in the engine of a motor vehicle and natural gas purchased and converted into CNG, for use or for sale for use or consumption directly and exclusively in the engine of a motor vehicle.

* NB Repealed September 1, 2031

(43) Ferry boats used directly and predominantly to provide ferry service for vehicles and passengers within a county or counties by a

ferry company whose rates for that ferry service are regulated by the county or counties in which that service is provided under section one hundred thirty-one-g of the highway law and property used by or purchased for the use of those exempt ferry boats for fuel, provisions, supplies, maintenance and repairs.

(44) monuments as that term is defined in paragraph (f) of section fifteen hundred two of the not-for-profit corporation law, and tangible personal property that will become a physical component part of such monuments.

(45) Sales by a brewery licensed under section fifty-one of the alcoholic beverage control law, or a farm brewery licensed under section fifty-one-a of such law, of no more than four samples of beer not exceeding four fluid ounces each, and each sample shall be a different beer than the others. Only a customer's first purchase during each calendar day at each licensed entity shall be exempt under this paragraph.

(46) Breast pump replacement parts and breast pump collection and storage supplies to an individual purchaser for home use. For purposes of this subdivision:

(A) "Breast pump replacement parts" shall mean items used in conjunction with a breast pump to collect milk expressed from a human breast and shall include, but not be limited to: breast shields and breast shield connectors; breast pump tubes and tubing adapters; breast pump valves and membranes; backflow protectors and backflow protector adapters; and bottles and bottle caps specific to the operation of the breast pump. "Breast pump replacement parts" does not include storage bags and infant feeding bottles that are not specifically designed for, or a component part of, a breast pump.

(B) "Breast pump collection and storage supplies" shall mean breast milk storage bags used to collect breast milk and to store collected breast milk until it is ready for consumption.

(b) (i) Telephony and telegraphy and telephone and telegraph service used by newspapers, electronic news services, radio broadcasters and television broadcasters in the collection or dissemination of news shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five of this article if the charge for such services is a toll charge or a charge for mileage services, including the associated

station terminal equipment.

(ii) Gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in research and development in the experimental or laboratory sense shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

(iii) (A) Electricity, steam, and refrigeration and electric, steam, and refrigeration services that are (1) metered and (2) generated or produced by a cogeneration facility owned or operated by a cooperative corporation containing at least fifteen hundred apartments, where such electricity, steam, or refrigeration and/or electric, steam, or refrigeration services are distributed to tenants and/or occupants of a cooperative corporation, shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(B) For purposes of this paragraph, the term "cogeneration facility" means (1) a facility that produces electric energy and steam or other forms of useful energy (such as heat) that are used for industrial, commercial, or residential heating or cooling purposes that was in operation before January first, two thousand four, and is used to generate electricity and/or thermal energy produced by such facility when such electricity and/or thermal energy is supplied to and used by tenants and/or occupants of a cooperative corporation; or (2) a cogeneration facility, as defined in clause one of this subparagraph, that has been replaced by any other facility used to generate electricity and/or thermal energy produced by such facility when such electricity and/or thermal energy is supplied to and used by tenants and/or occupants of a cooperative corporation.

(C) For purposes of this paragraph, the term "cooperative corporation" means a corporation organized under the laws of New York, at least some

of the stockholders of which are entitled, by reason of the stockholders' ownership interest of stock in the corporation, to occupy for dwelling purposes an apartment in a building owned by the corporation pursuant to a lease or occupancy agreement with the corporation.

(D) Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service, used or consumed in the production of electricity, steam, and refrigeration and electric, steam, and refrigeration services for sale that are exempted under subparagraph (A) of this paragraph, shall not be entitled to the exemption provided by paragraph one of subdivision (c) of this section.

(c) (1) Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, assembling, generating, refining, mining or extracting shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(2) Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both, shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(d) Services otherwise taxable under paragraph (1), (2), (3), (7) or (8) of subdivision (c) of section eleven hundred five shall be exempt from tax under this article if the tangible property upon which the services were performed is delivered to the purchaser outside this state for use outside this state.

(e) Telephone and telegraph service paid for by inserting coins in coin operated telephones where the charge is twenty-five cents or less shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five. For the purposes of this subdivision, each payment for overtime or additional usage beyond the initial usage period shall be deemed to be a separate charge.

(f) (1) Services rendered by a veterinarian licensed and registered as required by the education law which constitute the practice of veterinary medicine as defined in said law, including hospitalization for which no separate boarding charge is made, shall not be subject to tax under paragraph (3) of subdivision (c) of section eleven hundred five, but the exemption allowed by this subdivision shall not apply to other services provided by a veterinarian to pets and other animals, including, but not limited to, boarding, grooming and clipping. Articles of tangible personal property designed for use in some manner relating to domestic animals or poultry, when sold by such a veterinarian, shall not be subject to tax under subdivision (a) of section eleven hundred five or under section eleven hundred ten. However, the sale of any such articles of tangible personal property to a veterinarian shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one and shall not be exempt from retail sales tax.

(2) Drugs or medicine sold to or used by a veterinarian for use in rendering services that are exempt pursuant to paragraph one of this subdivision to livestock or poultry used in the production for sale of tangible personal property by farming, or sold to a person qualifying for the exemption provided for in paragraph six of subdivision (a) of this section for use by such person on such livestock or poultry.

(g) Services otherwise taxable under paragraph (3) of subdivision (c) of section eleven hundred five shall be exempt from tax (1) if performed upon prosthetic aids, hearing aids, eyeglasses, artificial devices or medical equipment when receipts from the retail sale of such items are exempt from tax under the provisions of paragraphs three and four of subdivision (a) of this section or (2) if performed upon tractors, trailers or semi-trailers or on property installed on such vehicles for their equipping, maintenance or repair when receipts from the retail sale of such items are exempt from tax under the provisions of paragraph twenty-six of subdivision (a) of this section.

(h) Sales of tangible personal property by a railroad in reorganization to a profitable railroad, as such terms are defined in section one hundred two of the rail reorganization act of nineteen hundred seventy-three, as part of a plan of reorganization and restructuring under such rail reorganization act, shall be exempt from

the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten.

(i) (A) Receipts from the retail sale of a shopping paper to the publisher of such publication shall be exempt from the tax imposed by subdivision (a) of section eleven hundred five of this article and receipts from the sale of printing services performed in publishing such paper shall be exempt from the tax imposed by paragraph two of subdivision (c) of such section.

(B) For purposes of this subdivision, the term "shopping paper" shall mean those community publications distributed to the public, without consideration, for purposes of advertising and public information. To qualify as a shopping paper for purposes of this subdivision, the publication must also:

- (1) be distributed to the public on a community-wide basis,
- (2) be published at stated intervals at least fifty times a year;
- (3) having continuity as to title and general nature of content from issue to issue,
- (4) contain in each issue news of general or community interest and community notices or editorial comment or articles by different authors;
- (5) not constitute a book, either singly or when successive issues are put together;
- (6) contain in each issue advertisements from numerous unrelated advertisers;
- (7) be independently owned in that the publication is not owned by or under the control of the owners or lessees of a shopping center or a merchants association or similar entity or a business which sells property or services (other than advertising) and the advertisements in such publication are not predominantly for the property or services sold by such business; and
- (8) meet the requirement set forth in paragraph (C) of this subdivision.

(C) The advertisements in such publication shall not exceed ninety percent of the printed area of all issues as averaged on an annual basis.

(D) The term "shopping paper" shall not include mail order and other catalogs, advertising fliers, travel brochures, house organs, theatre

programs, telephone directories, shipping and restaurant guides, racing tip and form sheets, shopping center advertising sheets and similar publications.

* (j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemptions provided in paragraphs nine and forty-two of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel, CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

* NB Effective until September 1, 2031

* (j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of

this article with respect to sales and uses of kero-jet fuel. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

* NB Effective September 1, 2031

(k) Receipts from the sale of food eligible to be purchased with coupons issued under or pursuant to the federal food stamp act of nineteen hundred seventy-seven (7 U.S.C. § 2011 et seq.), as amended, from retail food stores and other participants, approved for participation under or pursuant to such act, shall be exempt from the sales and compensating use taxes imposed under this article, when such food is purchased with such coupons, but only so long as such act conditions state participation in the federal food stamp program on this state providing an exemption from state and local sales taxes for purchases of food made with coupons issued under or pursuant to such act and this state is participating in such program.

(l) Tangible personal property manufactured, processed or assembled and donated by the manufacturer, processor or assembler to an organization described in subdivision (a) of section eleven hundred sixteen shall be exempt from tax under this article provided that the manufacturer, processor or assembler offers the same kind of tangible personal property for sale in the regular course of business and provided further that the manufacturer, processor or assembler has not made any other use of the tangible personal property which is donated. Nothing in this subdivision shall be construed to allow a refund or credit of tax properly paid pursuant to this article.

(m) (1) The services of training and maintaining a racehorse to race in a race or race meeting held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or a similar law of

another state, when the services are rendered to the owner of the racehorse by a trainer of the racehorse, shall be exempt from tax under this article;

(2) Tangible personal property actually transferred by a trainer to the owner of the racehorse in conjunction with the rendering of a service that is exempt under paragraph one of this subdivision shall be exempt from tax under this article. However, the sale to a trainer of such a racehorse of any such tangible personal property or such services taxable under this article shall not be deemed a sale for resale within the meaning of paragraph four of subdivision (b) of section eleven hundred one and shall not be exempt from retail sales or compensating use tax;

(3) For purposes of this subdivision, a trainer means a horse trainer licensed under the racing, pari-mutuel wagering and breeding law or a similar law of another state, and a racehorse means a horse registered with the jockey club, the United States trotting association, American quarterhorse association or the National steeplechase and hunt association or a horse, during the first twenty-four months of its life, if it is eligible to be so registered.

(n) (1) Except as otherwise provided in this subdivision, promotional materials mailed, shipped or otherwise distributed from a point within the state, by or on behalf of vendors or other persons to their customers or prospective customers located outside this state for use outside this state shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(2) Services otherwise taxable under paragraph one or two of subdivision (c) of section eleven hundred five of this article relating to mailing lists or activities directly in conjunction with mailing lists shall be exempt from tax under this article if such services are performed on or directly in conjunction with promotional materials exempt under paragraph one or four of this subdivision.

(3) Receipts from the retail sale of promotional materials, receipts from every sale, except for resale, of services described in paragraph one or two of subdivision (c) of section eleven hundred five to such promotional materials and consideration given or contracted to be given

for either such materials or such services to such materials shall be exempt from tax under this article to the extent of the vendor's separately stated charge to the purchaser of such materials or services for the vendor's cost to ship or deliver such materials to the purchaser's customers or prospective customers by means of the United States postal service, paid by the vendor to such postal service to ship or deliver such materials, but only where the vendor separately states such charge to ship or deliver (not exceeding the vendor's United States postal service costs) in a written contract with the purchaser or on a written bill rendered to the purchaser.

(4) Notwithstanding any contrary provisions of paragraph one of this subdivision, promotional materials which are printed materials and promotional materials upon which services described in paragraph two of subdivision (c) of section eleven hundred five have been directly performed shall be exempt from tax under this article where the purchaser of such promotional materials mails or ships such promotional materials, or causes such promotional materials to be mailed or shipped, to its customers or prospective customers, without charge to such customers or prospective customers, by means of a common carrier, United States postal service or like delivery service.

(5) Services otherwise taxable under paragraph two of subdivision (c) of section eleven hundred five performed on promotional materials exempt under paragraph four of this subdivision shall be exempt from tax under this article.

(6) Storing promotional materials exempt under paragraph four of this subdivision shall be exempt from tax under this article where the vendor of the storing service is also either the vendor of such exempt promotional materials or the vendor who rendered exempt services under paragraph two or five, or both, of this subdivision with respect to such exempt promotional materials and the purchaser of the storing service is the purchaser of such exempt promotional materials.

(7) Mechanicals, layouts, artwork, photographs, color separations and like property shall be exempt from tax under this article where such property is purchased, manufactured, processed or assembled by a person who furnishes such property to a printer and the printer uses such property directly and predominantly in the production of promotional materials exempt under paragraph four of this subdivision, or in

performing services exempt under paragraph five of this subdivision, for sale by such printer to the person who furnished such property to the printer.

(8) Nothing in this subdivision shall be construed to exempt tangible personal property (i) purchased by a person (other than exempt promotional materials described in paragraph four of this subdivision) or (ii) manufactured, processed or assembled by the manufacturer, processor or assembler, who furnishes such property to the vendor of promotional materials exempt under paragraph one or four of this subdivision to be included as free gifts with such exempt promotional materials to be mailed or shipped to such purchaser's or such manufacturer's, processor's or assembler's customers or prospective customers or who otherwise uses such property in this state, for example, by giving or donating the property as free gifts to another person, unless such tangible personal property is mailed, shipped or otherwise distributed from a point within this state to such customers or prospective customers located outside this state for use outside this state.

(o) Services otherwise taxable under subdivision (c) of section eleven hundred five or under section eleven hundred ten shall be exempt from tax under this article where performed on computer software of any nature; provided, however, that where such services are provided to a customer in conjunction with the sale of tangible personal property any charge for such services shall be exempt only when such charge is reasonable and separately stated on an invoice or other statement of the price given to the purchaser.

(q) Services otherwise taxable under paragraph three of subdivision (c) of section eleven hundred five or under section eleven hundred ten of this article, and tangible personal property purchased and used by the person who sells such services in performing such services, where such property becomes a physical component part of the property upon which the services are performed, shall be exempt from tax under this article where such services are performed on a barge which is not self propelled, has a cargo capacity of at least one thousand short tons, is used exclusively by the owner, lessee or operator of the barge to transport goods or other property in the conduct of such person's business and is primarily engaged in interstate or foreign commerce.

(r) Receipts from the sale of alarm call services designed specifically to respond to medical emergencies and the use of such services, otherwise taxable under paragraph eight of subdivision (c) of section eleven hundred five or under clause (C) of subdivision (a) of section eleven hundred ten of this article, shall be exempt from such taxes.

* (s) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred three of this article.

* NB There are 2 sub (s)'s

* (s) (1) The sale of any good or service necessary for the acquisition, sustenance or maintenance of a guide dog, a hearing dog or a service dog, as defined in section one hundred eight of the agriculture and markets law, which is utilized by any person with a disability, shall be exempt from taxation pursuant to this article.

(2) For the purposes of this subdivision, "person with a disability" shall mean any person with a disability as that term is defined in subdivision twenty-one of section two hundred ninety-two of the executive law who uses a guide dog, hearing dog, or service dog to do work or perform tasks for such person, with respect to such disability and for which such dog is trained.

(3) The commissioner shall create and implement a means of identifying persons who make purchases which shall be exempt pursuant to this subdivision. Such persons shall include persons who have a dependent with a disability, and who makes purchases on behalf of such dependent. Only persons presenting such means of identification shall receive the exemption granted pursuant to this subdivision. Furthermore, the commissioner shall promulgate any rules and regulations necessary to implement the provisions of this subdivision.

* NB There are 2 sub (s)'s

(t) (1) Receipts of a car wash facility from every sale, except for resale, of the service of washing, waxing or vacuuming a motor vehicle or other tangible personal property and consideration given or contracted to be given for such service at such a facility, where (i) the motor vehicle or other tangible personal property is washed, waxed or vacuumed at such facility by means exclusively of coin-operated equipment at such facility of the vendor providing the service; and (ii)

neither the vendor nor any employee of the vendor assists in washing, waxing or vacuuming the motor vehicle or other tangible personal property; and (iii) the purchaser or user of the service washes, waxes or vacuums such person's motor vehicle or other tangible personal property at such a facility, or (iv) the motor vehicle or other tangible personal property is washed, waxed or vacuumed by automated equipment without assistance by the purchaser or user of the service, shall be exempt from tax under this article, to the extent of the amount of money or value, in money, of tokens deposited in such coin-operated equipment by the purchaser of the service.

(2) Except to the extent exempt under paragraph one of this subdivision receipts from every sale, except for resale, of the service of vacuuming a motor vehicle or other tangible personal property and consideration given or contracted to be given for such service, where the purchaser or user of the service vacuums such person's motor vehicle or other tangible personal property at the facility where the vacuum equipment is located, by means exclusively of coin-operated equipment and neither the vendor operating the facility nor any employee of the vendor assists the purchaser in vacuuming the vehicle or other tangible personal property, shall be exempt from tax under this article, to the extent of the amount of money or value, in money, of tokens deposited in such coin-operated equipment by the purchaser of the service.

(3) For purposes of this subdivision, the term "coin-operated" includes coin-operated, currency-operated or token-operated and the term "motor vehicle" shall mean a motor vehicle as defined in subdivision (f) of section eleven hundred thirty-two of this article.

(u) Receipts from every sale of the services described in paragraph three of subdivision (c) of section eleven hundred five of this article to omnibuses, parts, equipment and lubricants exempt from tax under paragraph thirty-two of subdivision (a) of this section shall be exempt from tax under this article. Where receipts from the sale of or consideration given or contracted to be given for the purchase of a service have been exempted under this subdivision, such receipts or consideration shall not also qualify for the refund or credit described in subdivision (b) of section eleven hundred nineteen of this article; where any or all of the tax on receipts from the sale of or consideration given or contracted to be given for the purchase of a

service has been refunded or credited under such subdivision (b), no part of such receipts or consideration shall be exempt under this subdivision.

(v) Receipts from the sale of Internet access service, including start-up charges, and the use of such service, shall be exempt from the taxes imposed under this article. For purposes of this subdivision, the term "Internet access service" shall mean the service of providing connection to the Internet, but only where such service entails the routing of Internet traffic by means of accepted Internet protocols. The provision of communication or navigation software, an e-mail address, e-mail software, news headlines, space for a website and website services, or other such services, in conjunction with the provision of such connection to the Internet, where such services are merely incidental to the provision of such connection, shall be considered to be part of the provision of Internet access service.

* (w) Receipts from the sale of gas or electricity or gas or electric service of whatever nature and consideration given or contracted to be given for, or for the use of, gas or electricity or gas or electric service of whatever nature purchased for use or consumption directly and exclusively to provide gas or electric service of whatever nature consisting of operating a gas pipeline or gas distribution line or an electric transmission or distribution line and ensuring the necessary working pressure in an underground gas storage facility shall be exempt from sales and compensating use taxes imposed by this article. Such exempt gas or electricity or gas or electric service of whatever nature shall include, but shall not be limited to, such gas or electricity or gas or electric service of whatever nature used or consumed directly and exclusively to (1) ensure necessary working pressure in a gas pipeline used to transport, transmit or distribute gas, (2) operate compressors used to transport, transmit or distribute gas through such a gas pipeline or distribution line or used to ensure necessary working pressure in such a storage facility, (3) operate heaters to prevent gas in such a pipeline or distribution line from freezing, (4) operate equipment which removes impurities and moisture from gas in such a pipeline or distribution line, (5) operate substations and equipment related to electric transmission and distribution lines such as transformers, capacitors, meters, switches, communication devices and

heating and cooling equipment, and (6) ensure the reliability of electricity or electric service transmitted or distributed through such lines, for example, by operating reserve capacity machinery and equipment.

* NB There are 2 sub. (w)'s

* (w) Receipts from sales by a senior citizen independent housing community of food or drink (other than beer, wine or other alcoholic beverages) for consumption on the premises of such community (1) to its residents and (2) to guests of such residents, provided that the dining facility where food and drink is served to such residents and their guests is not open to the public, shall be exempt from the tax imposed by subdivision (d) of section eleven hundred five of this article, provided that any such food or drink shall be exempt only where it is served at the dining facility at such community or served to the residents or the residents' guests in the residents' rooms. For the purposes of this subdivision, the term "senior citizen" means a person at least fifty-five years of age and the term "senior citizen independent housing community" means a residential facility, with or without additional facilities such as recreational facilities, which is designed for senior citizens, the residents of which are senior citizens, spouses of such senior citizens or any other person, not necessarily related, who has resided with a senior citizen for at least six months and persons hired to provide live-in, long term care to a resident and who are actually providing such care to such a resident for compensation. Nothing in this subdivision shall be construed to apply to food or drink sold or served at a hotel, motel, rooming house or other similar establishment or at a restaurant, tavern or other similar establishment. The exemption provided by this subdivision shall not be construed to apply to food or drink sold through vending machines.

* NB There are 2 sub. (w)'s

(x) Receipts from every sale of, and consideration given or contracted to be given for, or for the use of, the following tangible personal property and services shall be exempt from the taxes imposed by this article:

(1) Tangible personal property for use or consumption directly and predominantly in production of live dramatic or musical arts performances in a theater or other similar place of assembly (but not

including a roof garden, cabaret or other similar place), with a seating capacity of one hundred or more chairs that are rigidly anchored to the construction or fixed in place so as to prevent movement in any direction, but only where it can be shown at the time such tangible personal property is purchased that such performances are to be presented to the public in such theater or other similar place on a regular basis of at least five performances per week for a period of at least two consecutive weeks, the content of each such performance shall be the same and a charge is or is to be made for admission to the place where such performances occur. For purposes of this subdivision, the term "place of assembly" shall mean a place of assembly with a stage in which scenery and scenic elements are used, as described in section 27-232 and subdivision (a) of section 27-255 of the administrative code of the city of New York (as such section and subdivision exist on January first, nineteen hundred ninety-eight), and for which an approved seating plan is required to be kept, as described in section 27-528 of the administrative code of the city of New York (as such section exists on January first, nineteen hundred ninety-eight), whether or not such theater or other similar place is located in such city. Nothing in this paragraph shall be construed to exempt tangible personal property which is permanently affixed to, or becomes an integral component part of, a structure, building, or real property.

(2) Services described in paragraph two or three of subdivision (c) of section eleven hundred five of this article when rendered with respect to property exempt under paragraph one of this subdivision.

(y) Services otherwise taxable under paragraph three, five or eight of subdivision (c) of section eleven hundred five or under section eleven hundred ten of this article shall be exempt from any tax imposed pursuant to such provisions where such services are rendered directly to or in relation to the property exempt from tax pursuant to paragraph thirty-seven of subdivision (a) of this section, provided however where any such services are rendered to property or in relation to property which was in part not exempt under such paragraph thirty-seven, the commissioner shall provide for a method of allocation to exempt a portion of such services.

(aa)(1) The following services shall be exempt when rendered to a broadcaster in connection with its broadcasting business:

(i) The services described in paragraph two of subdivision (c) of section eleven hundred five of this article and the services of editing, dubbing, and mixing when performed in connection with the production, post-production or transmission of live or recorded programs described in subparagraph (A) of paragraph thirty-eight of subdivision (a) of this section.

(ii) The services described in paragraph three of subdivision (c) of section eleven hundred five of this article when performed on the tangible personal property described in paragraph thirty-eight of subdivision (a) of this section.

(iii) The services described in paragraph five of subdivision (c) of section eleven hundred five of this article when performed on property described in paragraph thirty-eight of subdivision (a) of this section which subsequent to its installation has become an addition or capital improvement to real property, property or land, as such terms are defined in the real property tax law.

(2) For purposes of this subdivision: the terms "broadcaster", "programs", and "recorded programs" shall have the same meaning as that ascribed to those terms in subparagraph (C) of paragraph thirty-eight of subdivision (a) of this section.

(bb) 1. Receipts from the sale of services described in paragraph two or three of subdivision (c) of section eleven hundred five of this article, and consideration given or contracted to be given for, or for the use of, such services, shall be exempt from tax under this article when rendered with respect to property exempt under paragraph thirty-nine of subdivision (a) of this section.

2. Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of a film for sale, as described in paragraph thirty-nine of subdivision (a) of this section, shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(cc) Notwithstanding any other provision of law to the contrary, receipts from the sale of mobile telecommunications service by a home service provider shall be exempt from the taxes imposed by subparagraph

(B) of paragraph one and paragraph two of subdivision (b) of section eleven hundred five of this article if the mobile telecommunications customer's place of primary use is within a taxing jurisdiction outside this state.

(dd) (1) Services otherwise taxable under paragraph three of subdivision (c) of section eleven hundred five or under section eleven hundred ten of this article, and tangible personal property purchased and used by the person who sells such services in performing such services, where such property becomes a physical component part of the property upon which the services are performed or where such property is a lubricant applied to aircraft, shall be exempt from tax under this article where such services are performed on aircraft.

(2) The service of storing an aircraft provided by a person who sells a service exempt under paragraph one of this subdivision, when such storing is rendered in conjunction with, and during the rendering of, such service to such aircraft, shall be exempt from the tax imposed under paragraph four of subdivision (c) of section eleven hundred five of this article.

* (ee) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, residential solar energy systems equipment and the service of installing such systems. For the purposes of this subdivision, "residential solar energy systems equipment" shall mean an arrangement or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water and/or electricity. Such arrangement or components shall not include equipment that is part of a non-solar energy system or which uses any sort of recreational facility or equipment as a storage medium.

(2) Receipts from the sale of electricity by a person primarily engaged in the sale of solar energy system equipment and/or electricity generated by such equipment pursuant to a written agreement under which such electricity is generated by residential solar energy system equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on residential property of the purchaser of such electricity; and (C) used to provide heating, cooling, hot water or electricity to such property.

* NB There are 2 sb (ee)'s

* (ee) (1) Tangible personal property purchased by a tenant for use directly and exclusively to furnish and equip the tenant's leased premises for use as commercial office space shall be exempt from the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. Provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of the building in which such leased premises are located.

(2) Tangible personal property purchased by a tenant or landlord for use directly and exclusively in adding to, altering or improving the tenant's leased premises for use as commercial office space shall be exempt from the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. Provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of the building in which such leased premises are located.

(3) Tangible personal property sold to a contractor, subcontractor or repairperson for use directly and exclusively in adding to, altering or improving a tenant's leased premises for use as commercial office space shall be exempt from the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. Provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of the building in which such leased premises are located.

(4) The service of installing property exempt under paragraph one or two of this subdivision shall be exempt from the tax imposed by paragraph three of subdivision (c) of section eleven hundred five of this article.

(5) The exemptions in this subdivision shall apply only to purchases or sales made, uses occurring and services rendered during the period commencing on the first day of the tenant's lease term and ending one year later, provided that any such property must be delivered to the tenant's leased premises for use at or in such premises, and such services must be rendered there in full, no later than ninety days after the end of such year; and provided, further, that, with respect to leased or rented tangible personal property, such exemptions shall apply

only to lease or rental payments required to be paid during such year. Nothing in this subdivision shall be construed to exempt tangible personal property for use in erecting or adding to a structure or building of a landlord.

(6) When applying the exemptions in paragraphs one and two of this subdivision with respect to leased premises located in the World Trade Center site, the world financial center and the Battery Park city area, such paragraphs shall be read without regard to the requirement set forth in the last sentence of each such paragraph that tangible personal property is to become an integral component part of the building in which such leased premises are located.

(7) For purposes of this subdivision:

(A) "Tenant" means a person who, as lessee, enters into a space lease with a landlord for a term of ten years or more commencing on or after September first, two thousand five, but not later than, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (i) of subparagraph (D) of this paragraph, September first, two thousand twenty-seven and, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (ii) of subparagraph (D) of this paragraph not later than September first, two thousand twenty-nine, of premises for use as commercial office space in buildings located or to be located in the eligible areas. A person who currently occupies premises for use as commercial office space under an existing lease in a building in the eligible areas shall not be eligible for exemption under this subdivision unless such existing lease, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (i) of subparagraph (D) of this paragraph expires according to its terms before September first, two thousand twenty-seven or such existing lease, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (ii) of subparagraph (D) of this paragraph and such person enters into a space lease, for a term of ten years or more commencing on or after September first, two thousand five, of premises for use as commercial office space in a building located or to be located in the eligible areas, provided that such space lease with respect to leased premises located in eligible areas as defined in clause (i) of subparagraph (D) of this

paragraph commences no later than September first, two thousand twenty-seven, and provided that such space lease with respect to leased premises located in eligible areas as defined in clause (ii) of subparagraph (D) of this paragraph commences no later than September first, two thousand twenty-nine and provided, further, that such space lease shall expire no earlier than ten years after the expiration of the original lease.

(B) "Leased premises" means the premises within a building to be used as commercial office space under a lease described in subparagraph (A) of this paragraph, excluding any common areas and any other area outside such office space.

(C) "Landlord" means the person, unrelated by ownership to a tenant, who leases leased premises to that tenant.

(D) "Eligible areas" mean: ******(i) the area in the borough of Manhattan bounded by Murray street on the north starting at the intersection of West street and Murray street; running easterly along the center line of Murray street, connecting through City Hall Park with the center line of Frankfort street and running easterly along the center lines of Frankfort and Dover streets to the intersection of Dover street and South street; running southerly along the center line of South street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State street and running northwesterly along the center line of State street to the intersection of State street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West street; and running northerly along the center line of West street to the intersection of West street and Murray street. In addition, "eligible area" shall include the "Battery Park project area" as defined in section nineteen hundred seventy-two of the public authorities law, including the world financial center. Any tax lot that is partly located inside the eligible area shall be deemed to be entirely located inside such area, and

**** NB Repealed December 1, 2028**

(ii) the World Trade Center site, the World financial center and the Battery Park city area as defined as follows:

(a) "World Trade Center site" means the area of the former complex of seven buildings (known as numbers one through seven world trade center) around a central plaza, near the south end of the county of New York in

the downtown financial district, which were destroyed or damaged beyond repair in the attacks of September eleventh, two thousand one.

(b) "World financial center" means the complex of buildings known as numbers one through four world financial center, in an area in the county of New York bordered by West street, the Hudson River, and Vesey and Liberty streets.

(c) "Battery Park city area" means the "Battery Park project area" as defined in section nineteen hundred seventy-two of the public authorities law, including the world financial center.

(8) Notwithstanding any provision of law to the contrary, this subdivision shall also apply to the taxes imposed by section eleven hundred seven and the taxes imposed by section eleven hundred nine of this article, but shall not apply to the taxes imposed by section eleven hundred eight of this article or pursuant to the authority of article twenty-nine of this chapter other than taxes imposed by a city of a million or more pursuant to the authority of subdivision (a) of section twelve hundred ten of such article twenty-nine.

* NB Repealed December 1, 2030

* NB There are 2 sb (ee)'s

(ff) Receipts from retail sales of tangible personal property by any gift shop located in a veteran's home described in title thirty-eight of the United States Code shall be exempt from the taxes imposed by this article.

(gg) (1) Receipts from the sale of an electronic news service and consideration given or contracted to be given for, or for the use of, an electronic news service shall be exempt from the taxes imposed by paragraph one or nine of subdivision (c) of section eleven hundred five of this article and clause (C) of subdivision (a) of section eleven hundred ten of this article if the receipts from the sale of, or the consideration given for, or for the use of, the electronic news service does not exceed the cap amount as defined in subparagraph (ii) of paragraph thirty-seven of subdivision (b) of section eleven hundred one of this article. If the subscription period of the electronic news service is other than a year, the cap amount shall be adjusted proportionately in determining whether the subscription price exceeds the cap amount. If the contract for the sale of the electronic news service grants more than one person the right to view the electronic

news service, the receipts from the sale of, or the consideration given for, or for the use of, the service will be deemed not to exceed the cap amount only if the listed selling price for an individual subscription on the day the contract commences does not exceed the cap amount.

(2) Receipts from the sale of an electronic periodical and consideration given, or contracted to be given for, or for the use of, an electronic periodical shall be exempt from the taxes imposed by paragraph one or nine of subdivision (c) of section eleven hundred five and clause (C) of subdivision (a) of section eleven hundred ten of this article.

(3) If an electronic periodical is sold together with any other components that are taxable under this article (other than an electronic news service) for a single price, the exemption in paragraph two of this subdivision shall not apply to the receipts from the sale of, or consideration given, or contracted to be give for, or for the use of, the electronic periodical and such other components unless the vendor sells such electronic periodical and such other components separately in the regular course of business. If the requirement in the preceding sentence is satisfied, then the exemption will apply to an amount equal to the bundled price multiplied by a fraction, the numerator of which is the price of the electronic periodical when sold separately and the denominator of which is the sum of the price of the electronic periodical when sold separately and the price of the other components of the transaction when sold separately.

(4) If an electronic news service is sold together with other components for a single price, the exemption in paragraph one of this subdivision shall not apply to the receipts from the sale of, or consideration given, or contracted to be given, for, or for the use of, the electronic news service and the other components in the transaction unless one of the following exceptions applies and only to the extent indicated:

(i) The provider of the electronic news service does not separately sell the electronic news service in the regular course of business, the other components are not taxable under this article, and the bundled price is less than the cap amount, in which case the exemption applies to the full bundled price; or

(ii) The provider of the electronic news service sells the electronic

news service and each of the other components of the transaction separately in the regular course of business, whether or not the components are taxable under this article, and the separate price of the electronic news service does not exceed the cap amount. If the conditions in this subparagraph are met, the exemption provided by paragraph one of this subdivision will apply only to an amount equal to the bundled price multiplied by a fraction, the numerator of which is the price of the electronic news service when sold separately in the regular course of business, and the denominator of which is the sum of the price of the electronic news service when sold separately in the regular course of business and the prices of the other components when sold separately in the regular course of business; provided, however, that in no case shall the exempt amount be greater than the amount of the charge for the electronic news service when sold separately in the regular course of business.

(5) For the purposes of this subdivision "bundled price" means the price at which an electronic news service or an electronic periodical is sold together with any other components for one price; and "component" means any property, service, or other item of whatever nature that is sold together with an electronic news service or electronic periodical for one price.

(6) Nothing in this subdivision shall exempt, or be construed to exempt, any separate charge by the vendor of an electronic news service or electronic periodical for other information services, or any other property or service subject to tax under this article, that does not constitute an electronic news service or electronic periodical.

(hh) Receipts from the sale of transportation service consisting of a HAIL vehicle trip, as the term "HAIL vehicle trip" is defined in article twenty-nine-A of this chapter, shall be exempt from the tax imposed by paragraph ten of subdivision (c) of section eleven hundred five of this article, if such trip originates in a city of a million or more and terminates anywhere within the territorial boundaries of the metropolitan commuter transportation district and is subject to the tax on HAIL vehicle trips imposed by such article twenty-nine-A.

* (ii) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, commercial solar energy systems

equipment and the service of installing such systems. For the purposes of this subdivision, "commercial solar energy systems equipment" shall mean an arrangement or combination of components installed upon non-residential premises that utilize solar radiation to produce energy designed to provide heating, cooling, hot water and/or electricity. Such arrangement or components shall not include equipment that is part of a non-solar energy system.

(2) Receipts from the sale of electricity by a person primarily engaged in the sale of solar energy system equipment and/or electricity generated by such equipment pursuant to a written agreement under which the electricity is generated by commercial solar energy system equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on the non-residential premises of the purchaser of such electricity; and (C) used to provide heating, cooling, hot water or electricity to such premises.

* NB There are 2 sb (ii)'s

* (ii) Receipts from sales of and fees associated with water and sewer service line protection programs sold to owners of residential property shall be exempt from the taxes imposed by this article.

* NB There are 2 sb (ii)'s

* (jj) Notwithstanding any other provision of this article: (1) Receipts in excess of two hundred thirty thousand dollars from every sale of, and consideration given or contracted to be given for, or for the use of, a vessel shall be exempt from the taxes imposed by this article. For purposes of this subdivision, "vessel" shall have the same meaning as such term is defined in section twenty-two hundred fifty of the vehicle and traffic law and any outboard motor or trailer, as defined in section one hundred fifty-six of such law, when sold in conjunction with such vessel.

(2) For purposes of subdivision (b) of section eleven hundred eleven of this article, the purchase price, current market value, or fair rental value, as the case may be, of a vessel purchased by a resident of New York state outside of this state for use outside of this state that subsequently becomes subject to the compensating use tax imposed under this article shall be deemed not to exceed two hundred thirty thousand dollars.

(3) For purposes of subdivision (i) of section eleven hundred eleven

of this article, receipts from, or consideration given or contracted to be given for, the lease of a vessel that is subject to such subdivision (i) in excess of two hundred thirty thousand dollars shall be exempt from the calculation of tax due under such subdivision (i).

(4) For purposes of paragraph one of subdivision (q) of section eleven hundred eleven of this article, the limitations on exclusions from the definition of retail sale in paragraph one of such subdivision shall apply only to the first two hundred thirty thousand dollars of receipts from every sale of, or consideration given or contracted to be given for, or for the use of, a vessel.

(5) For purposes of paragraph two of subdivision (q) of section eleven hundred eleven of this article, the purchase price or market value, as the case may be, of a vessel subject to tax under paragraph two of such subdivision (q) shall be deemed not to exceed two hundred thirty thousand dollars.

(6) For purposes of subdivision two of section eleven hundred eighteen of this article, the limitation on the exclusion from compensating use tax in such subdivision two with respect to qualified property, as defined in such subdivision, shall apply only to the first two hundred thirty thousand dollars of consideration given or contracted to be given for, or for the use of, a vessel.

(7) For purposes of paragraph (a) of subdivision seven of section eleven hundred eighteen of this article, the refund or credit allowable under paragraph (a) of such subdivision seven shall be computed only with regard to tax legally due and paid to another state on the first two hundred thirty thousand dollars of the purchase price.

(8) Except as otherwise provided herein, this subdivision shall not be deemed to limit any other exemption, exclusion or credit in this article relating to a vessel.

* NB There are 2 sb (jj)'s

* (jj) Tangible personal property or services otherwise taxable under this article sold to a related person shall not be subject to the taxes imposed by section eleven hundred five of this article or the compensating use tax imposed under section eleven hundred ten of this article where the purchaser can show that the following conditions have been met to the extent they are applicable: (1)(i) the vendor and the purchaser are referenced as either a "covered company" as described in

section 243.2(f) or a "material entity" as described in section 243.2(l) of the Code of Federal Regulations in a resolution plan that has been submitted to an agency of the United States for the purpose of satisfying subparagraph 1 of paragraph (d) of section one hundred sixty-five of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") or any successor law, or (ii) the vendor and the purchaser are separate legal entities pursuant to a divestiture directed pursuant to subparagraph 5 of paragraph (d) of section one hundred sixty-five of such act or any successor law; (2) the sale would not have occurred between such related entities were it not for such resolution plan or divestiture; and (3) in acquiring such property or services, the vendor did not claim an exemption from the tax imposed by this state or another state based on the vendor's intent to resell such services or property. A person is related to another person for purposes of this subdivision if the person bears a relationship to such person described in section two hundred sixty-seven of the internal revenue code. The exemption provided by this subdivision shall not apply to sales made, services rendered, or uses occurring after June thirtieth, two thousand twenty-five, except with respect to sales made, services rendered, or uses occurring pursuant to binding contracts entered into on or before such date; but in no case shall such exemption apply after June thirtieth, two thousand twenty-eight.

* NB There are 2 sb (jj)'s

* (kk) Rent paid by a room remarketer to an operator that is not a room remarketer for an occupancy that the room remarketer intends to provide to an occupant for rent shall be exempt from the hotel unit fee imposed by section eleven hundred four of this article and the tax imposed by subdivision (e) of section eleven hundred five of this article, provided that such room remarketer furnishes such operator a certificate in such form and containing such information as may be prescribed by the commissioner. The exemption certificate provided for by this subdivision shall be administered by the commissioner in conformity with the rules for exemption or resale certificates in subparagraph (i) of paragraph one of subdivision (c) of section eleven hundred thirty-two of this article.

* NB There are 2 sb (kk)'s

* (kk) The following shall be exempt from tax under this article: (1)

Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, commercial fuel cell electricity generating systems equipment and the service of installing and maintaining such systems. For the purposes of this subdivision, "fuel cell electricity generating systems equipment" shall mean an electric generating arrangement or combination of components installed upon non-residential premises that utilize solid oxide, molten carbonate, proton exchange membrane or phosphoric acid fuel cell, or for the purposes of this section only, linear generator.

(2) Receipts from the sale of hydrogen gas or electricity by a person primarily engaged in the sale of fuel cell electricity generating system equipment and/or electricity generated by such equipment pursuant to a written agreement under which the electricity is generated by commercial fuel cell electricity generating system equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on the non-residential premises of the purchaser of such electricity; (C) placed in service; and (D) used to provide heating, cooling, hot water or electricity to such premises.

* NB There are 2 sb (kk)'s

* (ll) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, residential energy storage systems equipment and the service of installing such systems. For the purposes of this subdivision, "residential energy storage systems equipment" shall mean an arrangement or combination of components installed in a residence that stores electricity for use at a later time to provide heating, cooling, hot water and/or electricity.

(2) Receipts from the sale of electricity by a person primarily engaged in the sale of energy storage system equipment and/or electricity generated by such equipment pursuant to a written agreement under which such electricity is generated by residential energy system storage equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on residential property of the purchaser of such electricity; and (C) used to provide heating, cooling, hot water or electricity.

* NB Repealed June 1, 2028

§ 1116. Exempt organizations. (a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

(4) Any corporation, association, trust, or community chest, fund, foundation, or limited liability company, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office. The provisions of this paragraph regarding political campaign activity shall be interpreted in the same manner as section 501(c)(3) of the United States internal revenue code has been

interpreted as of the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph;

(5) A post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization:

(A) organized in this state,

(B) at least seventy-five percent of the members of which are past or present members of the armed forces of the United States as defined in section thirteen-a of the general construction law and substantially all of the other members of which are individuals who are cadets or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the armed forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) The following Indian nations or tribes residing in New York state: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda and Tuscarora, where it is the purchaser, user or consumer.

(7) A not-for-profit corporation operating as a health maintenance organization subject to the provisions of article forty-four of the public health law.

(8) Cooperative and foreign corporations doing business in this state pursuant to the rural electric cooperative law.

(9) A credit union, as defined in subdivision nine of section two of the banking law, where it is the purchaser, user, or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons.

(b) Nothing in this section shall exempt:

(1) (i) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), (5) or (6) of subdivision (a) of this section; (ii) sales, other than for resale, of services described in subdivision (b) or paragraph five of subdivision (c) of section eleven hundred five of this article by that organization, whether or not at a shop or store; (iii) retail sales of tangible personal property and sales, other than for resale, of those services by that organization, made with a degree of regularity,

frequency, and continuity by remote means, such as by telephone, the internet, mail order or otherwise; or (iv) retail sales of tangible personal property by lease or rental by that organization as lessor, whether or not at a shop or store;

(2) sales of food or drink in or by a restaurant, tavern or other establishment operated by an organization described in paragraph (1), paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section, other than sales exempt under paragraph (ii) of subdivision (d) of section eleven hundred five, from the taxes imposed hereunder, unless the purchaser is an organization exempt under this section;

(3) sales of the service of providing parking, garaging or storing for motor vehicles by an organization described in paragraph (4) or paragraph (5) of subdivision (a) of this section operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles; or

(4) sales of tangible personal property or services by cooperative and foreign corporations doing business in this state pursuant to the rural electric cooperative law, unless the purchaser is an organization exempt under this section.

(5) purchases of motor fuel or diesel motor fuel from the tax required to be prepaid pursuant to section eleven hundred two of this article and retail sales of motor fuel or diesel motor fuel subject to the tax imposed by sections eleven hundred five and eleven hundred ten of this article, except that purchases of such fuel by an organization described in paragraph one or two of subdivision (a) of this section for its own use or consumption, purchases of motor fuel by a hospital included in the organizations described in paragraph four of such subdivision for its own use and consumption, purchases of motor fuel and diesel motor fuel by a fire company or fire department, as defined in section three of the volunteer firefighters' benefit law or a voluntary ambulance service, as defined in section three thousand one of the public health law, for such department, company or service's own use and consumption for use in firefighting vehicles, apparatus or equipment, or emergency rescue or first aid response vehicles, apparatus or equipment, owned and operated by such department, company or service if such company,

department or service qualifies as an exempt organization pursuant to the provisions of paragraph four of subdivision (a) of this section and purchases of diesel motor fuel by an organization described in paragraph four of such subdivision for its own heating use and consumption shall be exempt from such tax required to be prepaid and from retail sales and use taxes on such fuel.

(6) purchases of cigarettes from the tax required to be prepaid pursuant to section eleven hundred three of this article, except that no prepayment of tax shall be required on sales of cigarettes sold under such circumstances that this state is without power to impose such tax or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and written policy statements of such agency applicable to such sales.

(7) rent received by a hotel operated by a college or university, where such hotel offers one hundred or more rooms for occupancy, and where the individual paying said rent is not doing business on behalf of any organization exempted pursuant to subdivision (a) of this section.

(c) (1) Where any organization described in paragraph four of subdivision (a) of this section carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

(2) Nothing in this subdivision shall exempt any hotel operated by a college or university and which offers one hundred or more rooms for occupancy from collecting taxes imposed pursuant to section eleven hundred five of this article from individuals who are not doing business on behalf of an organization exempted pursuant to subdivision (a) of this section.

(d) (1) Except as provided in paragraph (2) of this subdivision, any admissions all of the proceeds of which inure exclusively to the benefit of the following organizations shall not be subject to any of the taxes imposed under subdivision (f) of section eleven hundred five:

(A) an organization described in paragraph (4), (5) or (6) of

subdivision (a) of this section;

(B) a society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions; or

(C) national guard organizations; or

(D) a police or fire department of a political subdivision of the state, or a voluntary fire or ambulance company, or exclusively to a retirement, pension or disability fund for the sole benefit of members of a police or fire department or to a fund for the heirs of such members.

(2) The exemption provided under paragraph (1) of this subdivision shall not apply in the case of admissions to:

(A) Any athletic game or exhibition unless the proceeds shall inure exclusively to the benefit of elementary or secondary schools or unless in the case of an athletic game between two elementary or secondary schools, the entire gross proceeds from such game shall inure to the benefit of one or more organizations described in paragraph (4) of subdivision (a) of this section;

(B) Carnivals or rodeos in which any professional performer or operator participates for compensation, unless the entire net profit from such carnival or rodeo shall inure exclusively to the benefit of an organization described in paragraph four of subdivision (a) of this section, and such organization shall have as its charitable or educational purpose the operation of a school and of such a carnival or rodeo; or

(3) Admission charges for admission to the following places or events shall not be subject to any of the taxes imposed under subdivision (f) of section eleven hundred five:

(A) Any admission to agricultural fairs if no part of the net earnings thereof inures to the benefit of any stockholders or members of the association conducting the same; provided the proceeds therefrom are used exclusively for the improvement, maintenance and operation of such agricultural fairs.

(B) Any admission to a home or garden which is temporarily open to the general public as a part of a program conducted by a society or organization to permit the inspection of historical homes and gardens; provided no part of the net earnings thereof inures to the benefit of

any private stockholder or individual.

(C) Any admissions to historic sites, houses and shrines, and museums conducted in connection therewith, maintained and operated by a society or organization devoted to the preservation and maintenance of such historic sites, houses, shrines and museums; provided no part of the net earnings thereof inures to the benefit of any private stockholder or individual.

(e) Receipts from the service of trash removal shall be exempt from the tax on such service imposed by this article, where such service is rendered by a municipal corporation of the state, other than a city of one million or more, including such service rendered on its behalf, under an agreement with such corporation.

(f)(1) For purposes of paragraph four of subdivision (a) of this section, in the case of a qualified amateur sports organization (A) the requirement of such paragraph that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and (B) such organization shall not fail to meet the requirement of such paragraph merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(g) For purposes of paragraph five of subdivision (a) of this section, duly authorized representatives of any such post or organization, while acting on behalf of such post or organization, shall not be subject to the tax imposed under subdivision (e) of section eleven hundred five or the unit fee imposed by section eleven hundred four of this article, provided that such representatives provide an exempt organization certificate from such post or organization certifying that such representative is acting on its behalf.

§ 1117. Certain sales of motor vehicles and vessels. (a) Receipts from any sale of a motor vehicle or vessel shall not be subject to the retail

sales tax imposed under subdivision (a) of section eleven hundred five of this article, despite the taking of physical possession by the purchaser within this state, provided that:

(1) the purchaser, at the time of taking delivery

(i) is a nonresident of this state,

(ii) has no permanent place of abode in this state, and

(iii) is not engaged in carrying on in this state any employment, trade, business or profession in which the motor vehicle or vessel will be used in this state;

(2) (i) the vendor of such motor vehicle does not issue to such purchaser with respect to such motor vehicle either a temporary certificate of registration pursuant to subdivision seven of section four hundred twenty of the vehicle and traffic law or a temporary registration pursuant to section four hundred twenty-a of the vehicle and traffic law, or other like certificate or registration; or

(ii) the vendor of such vessel does not assign to such vessel a New York registration number or issue to such purchaser with respect to such vessel a temporary registration pursuant to section twenty-two hundred fifty-five of the vehicle and traffic law, or other like registration or temporary certificate of registration;

(3) the purchaser does not register such motor vehicle or vessel, as the case may be, in this state prior to registering such motor vehicle or vessel in another state or jurisdiction; and

(4) prior to taking delivery such purchaser furnishes to such vendor any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require to ensure proper administration of the tax imposed under subdivision (a) of section eleven hundred five of this article.

(b) A vendor shall not be liable for failure to collect tax on receipts from any sale of a motor vehicle or vessel provided that the vendor prior to making delivery obtains and keeps available for inspection by the commissioner any affidavit, statement or additional evidence, documentary or otherwise, as may be required to be furnished under subdivision (a) of this section; provided that such affidavit, statement or additional evidence is not known by the vendor, prior to making physical delivery of the motor vehicle or vessel, to be false.

(c) For purposes of this section, the term:

(1) "Motor vehicle" shall include a motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law and a trailer as defined in section one hundred fifty-six of the vehicle and traffic law.

(2) "Vessel" shall (i) include a vessel as defined in section twenty-two hundred fifty of the vehicle and traffic law, including any inboard or outboard motor and any trailer, as defined in section one hundred fifty-six of the vehicle and traffic law, sold with the vessel for use with such vessel; (ii) but not include a vessel weighing two hundred pounds or less, inclusive of any mast and sail or other rigging, which is not equipped with a motor and which is exempt from registration under paragraph (g) of subdivision one of section twenty-two hundred fifty-two of the vehicle and traffic law.

(d) Nothing in this section or section twelve hundred fourteen of this chapter shall be construed as meaning that the provisions of subdivision (i) of section eleven hundred eleven of this article do not apply to leases of motor vehicles, vessels and trailers described in subdivision (i) of section eleven hundred eleven of this article.

§ 1118. Exemptions from use tax. The following uses of property and services shall not be subject to the compensating use tax imposed under this article:

(1) In respect to the use of property used by the purchaser in this state prior to August first, nineteen hundred sixty-five.

(2)(a) In respect to the use of property or services purchased by the user while a nonresident of this state, except in the case of tangible personal property or services which the user, in the performance of a contract, incorporates into real property located in the state. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, shall not be deemed a nonresident with respect to the use in this state of property or services in such employment, trade, business or profession. This exemption does not apply to the use of qualified property where the qualified property is purchased primarily to carry individuals, whether or not for hire, who are agents, employees, officers, shareholders, members, managers, partners, or directors of (A) the purchaser, where any of those

individuals was a resident of this state when the qualified property was purchased or (B) any affiliated person that was a resident when the qualified property was purchased. For purposes of this subdivision: (i) persons are affiliated persons with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons that are affiliated persons with respect to each other; (ii) "qualified property" means vessels and motor vehicles; and (iii) "carry" means to take any person from one point to another, whether for the business purposes or pleasure of that person. For an exception to the exclusions from the definition of "retail sale" applicable to vessels, see subdivision (q) of section eleven hundred eleven of this article.

(b) Notwithstanding any provision of this article to the contrary, the exclusion in paragraph (a) of this subdivision shall not apply to the use within the state of property or a service purchased outside this state by a nonresident that is not an individual, unless such nonresident has been doing business outside the state for at least six months prior to the date such nonresident brought such property or service into this state.

(3) In respect to the use of property or services upon the sale of which the purchaser would be expressly exempt from the taxes imposed under subdivision (a), (b) or (c) of section eleven hundred five. In respect to the use of property to the extent that it is exempt from the sales tax under subdivision (g) of section eleven hundred eleven of this article.

(4) In respect to the use of property which is converted into or becomes a component part of a product produced for sale by the purchaser.

(5) In respect to the use of paper in the publication of newspapers and periodicals.

(6) In respect to the use of property used exclusively for the temporary construction, improvement, alteration or repair of any building, structure or exhibit, located entirely on land owned by a city having a population of one million or more and leased by it to a corporation organized for the sole purpose of holding a world's fair and

confining its operations solely to preparing for and conducting such fair.

(7) (a) In respect to the use of property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this chapter shall apply to the extent of the difference in such rates, except as provided in paragraph (b) of this subdivision.

(b) To the extent that the compensating use tax imposed by this article and a compensating use tax imposed pursuant to article twenty-nine are at a higher aggregate rate than the rate of tax imposed in the first taxing jurisdiction, the exemption provided in paragraph (a) of this subdivision shall be inapplicable and the taxes imposed by this article and pursuant to article twenty-nine shall apply to the extent of the difference between such aggregate rate and the rate paid in the first taxing jurisdiction. In such event, the amount payable shall be allocated between the tax imposed by this article and the tax imposed pursuant to article twenty-nine in proportion to the respective rates of such taxes.

(8) In respect to the use of spare parts (including engines), consumable technical supplies, maintenance and ground equipment used exclusively in the operation or handling or maintenance of aircraft, and aircraft stores, brought into this state from a foreign country by a foreign airline which holds a foreign air carrier permit, issued by the Civil Aeronautics Board pursuant to Section 402 of the Federal Aviation Act of 1958, as amended, to engage in foreign air transportation, provided that:

(i) such property is to be used on aircraft (or directly in the operation, handling or maintenance of aircraft) of the airline providing foreign air transportation services (or such aircraft of another foreign airline eligible under this subdivision); and

(ii) such property would not be subject to taxes imposed in the foreign country in which the particular foreign airline is based if brought into such country by a United States airline operating in that country.

(9) In respect to the use of a thoroughbred, standardbred or quarter horse purchased outside the state and brought into the state for the purpose of entering a racing event or events on which pari-mutuel wagering is authorized by law, and to prepare therefor. Provided, however, that the exemption contained in this subdivision shall not apply to any such horse which enters racing events in this state on more than five days in any one calendar year. Nothing contained herein shall alter the exemption provided to nonresidents, as specified in subdivision two of this section.

(10) In respect to the use of horses purchased outside the state and brought into the state for racing to the extent that the value of the horse exceeds one hundred thousand dollars. On or before December fifteenth, nineteen hundred eighty-five, and December fifteenth, nineteen hundred eighty-six, the board shall report to the director of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee concerning the benefits or costs associated with the provisions of this subdivision, an assessment of any economic impact and appropriate recommendations. The commissioner of taxation and finance shall provide to the board such reports as are necessary to effect the board's mandate.

(11) In respect to the use of computer software that did not constitute tangible personal property prior to September first, nineteen hundred ninety-one, used by the purchaser, author or other creator, or copyright owner in this state prior to such date.

(12) In respect to the use of prepaid telephone calling service prior to the effective date of a chapter of the laws of nineteen hundred ninety-nine which added this subdivision.

* (13) In respect to the use of the following items at a tasting held by a licensed producer of alcoholic beverages in accordance with the alcoholic beverage control law: (i) the alcoholic beverage or beverages authorized by the alcoholic beverage control law to be furnished at no charge to a customer or prospective customer at such tasting for consumption at such tasting; and (ii) bottles, corks, caps and labels

used to package such alcoholic beverages.

* NB There are 2 sb (13)'s

* (13) In respect to the use within the state of a vessel, as defined in section twenty-two hundred fifty of the vehicle and traffic law, until the first of the following events occur:

(a) the use of such vessel within this state by the purchaser thereof for a period in excess of ninety consecutive days;

(b) the date upon which such vessel is first required to be registered pursuant to section twenty-two hundred fifty-one of the vehicle and traffic law; or

(c) the date upon which such vessel is so registered.

* NB There are 2 sb (13)'s

§ 1119. (a) Subject to the conditions and limitations provided for herein, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five or section eleven hundred ten (1) on the sale or use of tangible personal property if the purchaser or user, in the performance of a contract, later incorporates that tangible personal property into real property located outside this state, (2) on the sale or use of tangible personal property purchased in bulk, or any portion thereof, which is stored and not used by the purchaser or user within this state if that property is subsequently reshipped by such purchaser or user to a point outside this state for use outside this state, (3) on the sale to or use by a contractor or subcontractor of tangible personal property if that property is used by him solely in the performance of a pre-existing lump sum or unit price construction contract, (4) on the sale or use within this state of tangible personal property, not purchased for resale, if the use of such property in this state is restricted to fabricating such property (including incorporating it into or assembling it with other tangible personal property), processing, printing or imprinting such property and such property is then shipped to a point outside this state for use outside this state, or (6) on the sale of tangible personal property purchased for use in constructing, expanding or rehabilitating industrial or commercial real property (other than property used or to be used exclusively by one or more registered vendors primarily engaged

in the retail sale of tangible personal property) located in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law, but only to the extent that such property becomes an integral component part of the real property. (For the purpose of clause (3) of the preceding sentence, the term "pre-existing lump sum or unit price construction contract" shall mean a contract for the construction of improvements to real property under which the amount payable to the contractor or subcontractor is fixed without regard to the costs incurred by him in the performance thereof, and which (i) was irrevocably entered into prior to the date of the enactment of this article or the enactment of a law increasing the rate of tax imposed under this article, or (ii) resulted from the acceptance by a governmental agency of a bid accompanied by a bond or other performance guaranty which was irrevocably submitted prior to such date.) Where the tax on the sale or use of such tangible personal property has been paid to the vendor, to qualify for such refund or credit, such tangible personal property must be incorporated into real property as required in clause (1) above, reshipped as required in clause (2) above, used in the manner described in clauses (3), (4) and (6) above within three years after the date such tax was payable to the tax commission by the vendor pursuant to section eleven hundred thirty-seven. Where the tax on the sale or use of such tangible personal property was paid by the applicant for the credit or refund directly to the tax commission, to qualify for such refund or credit, such tangible personal property must be incorporated into real property as required in clause (1) above, reshipped as required in clause (2) above, used in the manner described in clauses (3), (4) and (6) above within three years after the date such tax was payable to the tax commission by such applicant pursuant to this article. An application for a refund or credit pursuant to this section must be filed with such commission within the time provided by subdivision (a) of section eleven hundred thirty-nine. Such application shall be in such form as the tax commission may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time that he files his application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the

provisions in respect to applications for credit in section eleven hundred thirty-nine as provided in subdivision (e) of such section. With respect to a sale or use described in clause (3) above where a pre-existing lump sum or unit price construction contract was irrevocably entered into prior to the date of the enactment of this article or the bid accompanied by the performance guaranty was irrevocably submitted to the governmental agency prior to such date, the purchaser or user shall be entitled to a refund or credit only of the amount by which the tax on such sale or use imposed under this article plus any tax imposed under the authority of article twenty-nine exceeds the amount computed by applying against such sale or use the local rate of tax, if any, in effect at the time such contract was entered into or such bid was submitted.

In the case of the enactment of a law increasing the rate of tax imposed by this article, the purchaser or user shall be entitled only to a refund or credit of the amount by which the increased tax on such sale or use imposed under this article plus any tax imposed under the authority of article twenty-nine exceeds the amount computed by applying against such sale or use the state and local rates of tax in effect at the time such contract was entered into or such bid was submitted.

(b) Subject to the conditions and limitations provided for in this subdivision, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) and paragraph three of subdivision (c) of section eleven hundred five, or section eleven hundred ten of this article and any tax imposed pursuant to the authority of article twenty-nine of this chapter on the sale to or use by an omnibus carrier described in this subdivision of any omnibus, and of parts, equipment, lubricants, motor fuel, diesel motor fuel, maintenance, servicing or repair purchased and used in the operation of any such omnibus by such carrier or on the sale to or use by a vessel operator described in this subdivision of a vessel with a seating capacity of more than twenty passengers used for the transportation on water of passengers for hire, and of parts, equipment, lubricants, diesel motor fuel, maintenance, servicing or repair purchased and used in the operation of any such vessel by such operator. Any such omnibus carrier or vessel operator must provide local transit service in this state and operate pursuant to a certificate of public

convenience and necessity issued by the commissioner of transportation of this state or by a like officer or agency of the United States or pursuant to the contract, franchise or consent between such carrier or operator and a city having a population of more than one million inhabitants, or any agency of such city. The amount of such refund or credit shall be determined by first computing the local transit service percentage which shall be the proportion that, in the case of such a carrier, such carrier's vehicle mileage or, in the case of such an operator, such operator's vessel hours in local transit service in this state in the calendar year immediately preceding the end of the quarterly return period, prescribed by section eleven hundred thirty-six of this article, to which such refund or credit relates bears to such carrier's total mileage operated in this state in such year or such operator's total hours operated in this state in such year, as the case may be. An omnibus carrier or vessel operator which was not engaged in local transit service in the preceding calendar year shall determine such percentage with respect to its first four quarterly returns filed pursuant to section eleven hundred thirty-six of this article, by using the proportion that such carrier's vehicle mileage or such operator's vessel hours in local transit service in this state in the first three months of such operation bears to such carrier's total mileage or such operator's total hours operated in this state in such period. The amount of the refund or credit allowable on the combined state and local tax paid on such purchases or uses then shall be determined in accordance with the following table:

If the local transit service	The refund or credit is:
percentage is:	
Less than 10 percent	None
10 percent	10 percent of such combined tax
Greater than 10 percent but less	10 percent plus (the product of
than 70 percent	1.5 times each whole percent
	in excess of 10 percent) of
	such combined tax
70 percent or more	100 percent of such combined tax
For purposes of this subdivision, local transit service, vehicle	

mileage, vessel hours, total mileage operated and total hours operated shall be defined by rule or regulation of the commissioner and records satisfactory to the commissioner shall be maintained by the carrier or operator. An application for a refund or credit pursuant to this subdivision must be filed with the commissioner within the time provided by subdivision (a) of section eleven hundred thirty-nine of this article. Such application shall be in such form as the commissioner may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time that the applicant files the application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in section eleven hundred thirty-nine of this article as provided in subdivision (e) of such section.

(c) A refund or credit equal to the amount of sales or compensating use tax imposed by this article and pursuant to the authority of article twenty-nine, and paid on the sale or use of tangible personal property, shall be allowed the purchaser where such property is later used by the purchaser in performing a service subject to tax under paragraph (1), (2), (3), (5), (7) or (8) of subdivision (c) of section eleven hundred five or under section eleven hundred ten and such property has become a physical component part of the property upon which the service is performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax or if a contractor, subcontractor or repairman purchases tangible personal property and later makes a retail sale of such tangible personal property, the acquisition of which would not have been a sale at retail to him but for the second to last sentence of subparagraph (i) of paragraph (4) of subdivision (b) of section eleven hundred one. An application for the refund or credit provided for herein must be filed with the commissioner of taxation and finance within the time provided by subdivision (a) of section eleven hundred thirty-nine. Such application shall be in such form as the commissioner may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time that he files his application for

credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit. The procedure for granting or denying such applications for refund or credit and review of such determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine.

(d) (1) Subject to the conditions and limitations provided for in this section, a refund or credit will be allowed for taxes imposed on the retail sale of tangible personal property described in subdivision (a) of section eleven hundred five of this article, and on every sale of services described in subdivisions (b) and (c) of such section, and consideration given or contracted to be given for, or for the use of, such tangible personal property or services, where such tangible personal property or services are sold to a qualified empire zone enterprise or to a qualified entity that is also a tenant in or part of a New York state innovation hot spot as provided in section thirty-eight of this chapter or to a business located in a tax-free NY area approved pursuant to article twenty-one of the economic development law, provided that (A) such tangible personal property or tangible personal property upon which such a service has been performed or such service (other than a service described in subdivision (b) of section eleven hundred five of this article) is directly and predominantly, or such a service described in clause (A) or (D) of paragraph one of such subdivision (b) of section eleven hundred five of this article is directly and exclusively, used or consumed by (i) such qualified empire zone enterprise in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law with respect to which such enterprise is certified pursuant to such article eighteen-B, or (ii) such qualified entity at its location in or as part of a New York state innovation hot spot, or (iii) such business at its location in such tax-free NY area, or (B) such a service described in clause (B) or (C) of paragraph one of subdivision (b) of section eleven hundred five of this article is delivered and billed to (i) such enterprise at an address in such empire zone or (ii) such qualified entity at its location in or as part of the New York state innovation hot spot, or (iii) such business at its location in such tax-free NY area, or (C) the enterprise's place of primary use of the service described in paragraph two of such subdivision (b) of section eleven hundred five is at an address in such

empire zone or at its location in or as part of a New York state innovation hot spot, or at its location in such tax-free NY area; provided, further, that, in order for a motor vehicle, as defined in subdivision (c) of section eleven hundred seventeen of this article, or tangible personal property related to such a motor vehicle to be found to be used predominantly in such a zone, at least fifty percent of such motor vehicle's use shall be exclusively within such zone or at least fifty percent of such motor vehicle's use shall be in activities originating or terminating in such zone, or both; and either or both such usages shall be computed either on the basis of mileage or hours of use, at the discretion of such enterprise. For purposes of this subdivision, tangible personal property related to such a motor vehicle shall include a battery, diesel motor fuel, an engine, engine components, motor fuel, a muffler, tires and similar tangible personal property used in or on such a motor vehicle.

(2) Subject to the conditions and limitations provided for in this section, a refund or credit will be allowed for taxes imposed on the retail sale of, and consideration given or contracted to be given for, or for the use of, tangible personal property sold to a contractor, subcontractor or repairman for use in (A) erecting a structure or building of a qualified empire zone enterprise or a business located in a tax-free NY area approved pursuant to article twenty-one of the economic development law, (B) adding to, altering or improving real property, property or land of such an enterprise or such business, or (C) maintaining, servicing or repairing real property, property or land of such an enterprise or of such business, as the terms real property, property or land are defined in the real property tax law; provided, however, no credit or refund will be allowed under this paragraph unless such tangible personal property is to become an integral component part of such structure, building, real property, property or land located in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law in, and with respect to which such enterprise is certified pursuant to such article eighteen-B, or in an area approved as a tax-free NY area pursuant to article twenty-one of the economic development law where such business is located.

(3) Except as otherwise provided by law, the refund or credit provided for in this subdivision will not apply to taxes imposed by paragraph ten

of subdivision (c) of section eleven hundred five and eleven hundred seven of this article or to taxes imposed pursuant to the authority of article twenty-nine of this chapter.

(4) In those instances when the provisions of subdivision (w) of section nine hundred fifty-nine of the general municipal law are applicable, no refund or credit will be allowed under this subdivision unless the qualified empire zone enterprise has been issued an empire zone retention certificate.

(5) A taxpayer may not apply for a credit or refund under this subdivision more frequently than once a sales tax quarter, pursuant to subdivision (b) of section eleven hundred thirty-six of this article.

(6) Any reference in this chapter or in any local law, ordinance or resolution enacted pursuant to the authority of article twenty-nine of this chapter to former subdivision (z) of section eleven hundred fifteen of this article will be deemed to be a reference to this subdivision, and any such local law, ordinance or resolution which provides the exemptions described in former subdivision (z) of such section eleven hundred fifteen shall be deemed instead to provide the refunds and credits described in this subdivision.

(7) Notwithstanding any other provision in this article, article twenty-nine of this chapter, or any other law to the contrary, a credit or refund for any sale or use under this section shall not be allowed to a person that is first certified under article eighteen-B of the general municipal law on or after April first, two thousand nine, unless that sale or use is eligible for a credit or refund of the county or city sales and compensating use taxes imposed pursuant to the authority of subpart b of part I of article twenty-nine of this chapter.

(e) Subject to conditions and limitations provided in this subdivision, a room remarketer shall be allowed a refund or credit against the amount of tax collected and required to be remitted under section eleven hundred thirty-seven of this article in the amount of the tax it paid to an operator of a hotel under section eleven hundred four of this article, where applicable, and subdivision (e) of section eleven hundred five of this article. Provided, however, that, in order to qualify for a refund or credit under this subdivision for any sales tax quarterly period, the room remarketer must, for that quarter, (1) be registered for sales tax purposes under section eleven hundred

thirty-four of this article; (2) collect the taxes imposed by section eleven hundred four of this article, where applicable, and subdivision (e) of section eleven hundred five of this article; and (3) furnish the certificate of authority number of the operator to whom the applicant paid the tax in its application for refund or credit if required on that form or upon request. Provided that if the room remarketer requests the operator's certificate of authority number and is not provided with that number, the room remarketer may satisfy this requirement by providing the operator's name, business address, telephone number, and the address of the hotel where the occupancy took place. An application for refund or credit under this subdivision must be filed with the commissioner within the time provided by subdivision (a) of section eleven hundred thirty-nine of this article. The application must be in the form prescribed by the commissioner. Where an application for credit has been filed, the applicant may immediately take the credit on the return that is due coincident with or immediately subsequent to the time that the applicant files the application for credit. However, the taking of the credit on the return is deemed to be part of the application for credit. The procedure for granting or denying the applications for refund or credit and review of those determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine of this article. An operator, including a room remarketer, who is paid tax by a room remarketer must upon request provide the remarketer with its certificate of authority number, provided that the operator's failure to do so does not change the requirement set forth in paragraph three of this subdivision.

* (f)(1) Subject to the conditions and limitations provided for in this section, a refund will be allowed for tax paid pursuant to subdivision (a) of section eleven hundred five, or section eleven hundred ten of this article, on the purchase or use of tangible personal property sold to a participant who has received a certificate of eligibility in the economic transformation and facility redevelopment program; provided that such tangible personal property has been used in constructing, expanding or rehabilitating industrial or commercial real property located in an area designated as an economic transformation area pursuant to article eighteen of the economic development law, but only to the extent that such tangible personal property becomes an

integral component part of such real property. Such tangible personal property must be purchased, or contracted to be purchased, after the participant receives its certificate of eligibility and before the issuance of a certificate of occupancy and it must be used in a manner consistent with the participant's application for such constructed, expanded, or rehabilitated real property.

(2) Subject to the conditions and limitations provided for in this section, a refund will be allowed for taxes imposed on receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, tangible personal property sold to a contractor, subcontractor or repairman for use in (A) erecting a structure or building of a participant who has received a certificate of eligibility, or (B) adding to, altering or improving real property, property or land of such a participant, as the terms real property, property or land are defined in the real property tax law; provided, however, no refund will be allowed under this paragraph unless such tangible personal property has become an integral component part of such structure, building, real property, property or land located within an economic transformation area as defined by article eighteen of the economic development law in, and with respect to which such participant has been issued a certificate of eligibility pursuant to such article eighteen and only to the extent that such property is used in a manner consistent with the participant's application. Such tangible personal property must be in the contractor's inventory on or after the day the participant receives its certificate of eligibility, or be purchased or contracted to be purchased after the participant receives its certificate of eligibility, but such property must meet the conditions of the preceding sentence and be used before the issuance of a certificate of occupancy for such constructed, expanded, or rehabilitated real property.

(3) Notwithstanding any other provision of law, the refund provided for in this subdivision shall not apply to the taxes imposed by section eleven hundred seven or eleven hundred nine of this article or to any tax imposed pursuant to the authority of article twenty-nine of this chapter.

(4) Notwithstanding any other provision of law, where the tax on the sale or use of such tangible personal property has been paid to the vendor, to qualify for such refund, such tangible personal property must

be incorporated into real property and used as required in paragraphs one and two of this subdivision within three years after the date such tax was payable to the commissioner by the vendor pursuant to section eleven hundred thirty-seven of this article. Where the tax on the sale or use of such tangible personal property was paid by the applicant for the refund directly to the commissioner, to qualify for such refund, such tangible personal property must be incorporated into real property and used in the manner described in paragraphs one and two of this subdivision within three years after the date such tax was payable to the commissioner by such applicant pursuant to this article. An application for a refund pursuant to this section must be filed with the commissioner within the time provided by subdivision (a) of section eleven hundred thirty-nine of this article. Such application shall be in such form as the commissioner may prescribe. This application will be the only means of applying for the refund allowed by this section; the applicant may not take this refund in any other manner, including the taking of a credit on any return due pursuant to section eleven hundred thirty-six of this article. A taxpayer may not apply for a refund under this subdivision more frequently than once a sales tax quarterly period as described in subdivision (b) of section eleven hundred thirty-six of this article.

(5) The terms "participant", "economic transformation area", and "certificate of eligibility" shall have the same meaning as those terms have in section four hundred of the economic development law.

* NB Repealed December 31, 2026

§ 1120. Refunds and credits with respect to motor fuel and diesel motor fuel. (a) Retail vendor. (1) A vendor of motor fuel or diesel motor fuel who or which is required to collect the taxes imposed by subdivision (a) of section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter shall be allowed a refund or credit against the amount of tax collected and required to be remitted to the commissioner pursuant to the provisions of section eleven hundred thirty-seven of this article upon the retail sale of motor fuel or diesel motor fuel in the amount of the tax on such fuel prepaid by or passed through to and included in the

price paid by such vendor pursuant to the provisions of section eleven hundred two of this article.

(2) A refund or credit shall also be allowed such vendor for the tax prepaid by or passed through to and included in the price paid by such vendor upon any motor fuel or diesel motor fuel pursuant to the provisions of section eleven hundred two of this article if such fuel is sold at retail by such vendor under circumstances where the taxes imposed by section eleven hundred five of this article and pursuant to the authority of article twenty-nine of this chapter are not required by the provisions of this article to be collected and remitted upon receipts from a retail sale thereof.

(b) Retail user. A purchaser, user or consumer of motor fuel or diesel motor fuel at retail who or which is required to pay the tax imposed by section eleven hundred ten of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter with respect to the purchase of or the use or consumption of such fuel shall be allowed a credit against such tax required to be paid to the commissioner pursuant to such section and article in the amount of the tax prepaid by or passed through to and included in the price paid by such purchaser, user or consumer pursuant to the provisions of section eleven hundred two of this article.

(c) Self-use of motor fuel or diesel motor fuel purchased at wholesale. A refund or credit equal to the amount of tax prepaid by or passed through to and included in the price paid by a purchaser, user or consumer pursuant to the provisions of section eleven hundred two of this article with respect to a purchase of motor fuel or diesel motor fuel other than at retail shall be allowed such purchaser, user or consumer upon the use or consumption of such fuel at retail if the acquisition of such fuel by the purchaser, user or consumer would have otherwise been exempt pursuant to section eleven hundred five-A, eleven hundred fifteen or eleven hundred sixteen of this article but for the provisions of the last sentence of subdivision (c) of section eleven hundred two and subdivision (j) of section eleven hundred fifteen or of such last sentence and paragraph five of subdivision (b) of section eleven hundred sixteen of this article. Also, a refund or credit shall be allowed equal to the difference between the amount of tax prepaid by or passed through to and included in the price paid by a purchaser, user

or consumer pursuant to the provisions of section eleven hundred two of this article with respect to a purchase of diesel motor fuel other than at retail and the aggregate of the amount of tax that would have been imposed if measured by the applicable rate specified in section eleven hundred five-A of this article and the amount of tax that would have been imposed if measured by the applicable rate specified in section twelve hundred ten of article twenty-nine upon diesel motor fuel which is used for residential heating purposes if the purchase, use or consumption would have otherwise been subject to such lower rate of tax pursuant to such section eleven hundred five-A but for the last sentence of subdivision (a) of such section eleven hundred five-A or pursuant to section twelve hundred ten but for the last sentence of subparagraph (i) of paragraph three of subdivision (a) of such section twelve hundred ten.

(d) Purchase of motor fuel or diesel motor fuel at retail by an exempt organization. A refund or credit equal to the amount of tax imposed pursuant to section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter upon the sale of motor fuel or diesel motor fuel and paid by a purchaser shall be allowed such purchaser if the purchase, use or consumption of such fuel would have otherwise been exempt pursuant to section eleven hundred fifteen or eleven hundred sixteen of this article but for the provisions of subdivision (j) of section eleven hundred fifteen or paragraph five of subdivision (b) of section eleven hundred sixteen of this article. Also, there shall be allowed a refund or credit equal to the difference between the amount of tax actually imposed pursuant to section eleven hundred five of this article and the amount of tax that would have been imposed as measured by the applicable rate specified in section eleven hundred five-A of this article and a refund or credit equal to the difference between the tax actually imposed pursuant to the authority of article twenty-nine of this chapter and the amount of tax that would have been imposed if measured by the applicable rate specified in section twelve hundred ten of article twenty-nine upon diesel motor fuel which is used for residential heating purposes if the purchase, use or consumption would have otherwise been subject to such lower rate of tax pursuant to such section eleven hundred five-A but for the last sentence of subdivision (a) of such section eleven hundred

five-A or pursuant to section twelve hundred ten but for the last sentence of subparagraph (i) of paragraph three of subdivision (a) of such section twelve hundred ten.

(e) Immediate export. With respect to (i) motor fuel imported, manufactured or sold or purchased in this state, and (ii) highway diesel motor fuel, a refund or credit shall be allowed a registered distributor of this state or a purchaser of the tax required to be prepaid pursuant to section eleven hundred two of this article in the amount of such tax paid by or included in the price paid by a distributor or such purchaser if such fuel was exported from this state for sale outside this state, such distributor or such purchaser, as the case may be, exporting such fuel is duly registered with or licensed by the taxing authorities of the state to which such fuel is exported as a distributor or a dealer in the fuel being so exported, and in connection with such exportation such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and provided the applicant complies with all requirements and rules and regulations of the commissioner, including evidentiary requirements, relating thereto.

(f) Refunds of the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article shall be allowed only to the extent such tax paid by or passed through to the retail vendor, or the purchaser, consumer or user exceeds the amount of tax required to be collected from such person or required to be remitted by the provisions of this article and pursuant to the authority of article twenty-nine of this chapter.

(g) Such credit shall be allowed only to the extent that the tax required to be prepaid pursuant to section eleven hundred two of this article is prepaid by such vendor, purchaser, user or consumer (i) upon importation, manufacture, sale or use, as the case may be, and (ii) with respect to the identified motor fuel or diesel motor fuel for which such credit is claimed upon the use or consumption thereof, but only to the extent that the tax imposed by section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter together with the tax imposed by section eleven hundred ten of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter required to be paid, collected and remitted has been paid, collected and remitted.

(h) Such refunds and credits shall be subject to the provisions of sections eleven hundred nineteen and eleven hundred thirty-nine of this article as if such sections were incorporated in full into this section and had expressly referred to the refunds and credits authorized by this section including the periods of limitations on payments and applications to the commissioner; provided, however, that as provided in subdivision (e) of section eleven hundred thirty-nine of this article no interest shall be allowed or paid upon any refund made or credit allowed pursuant to subdivisions (a) and (b) of this section; and provided, further, that, with respect to refunds or credits pursuant to subdivision (d) of this section with respect to organizations described in paragraph four of subdivision (a) of section eleven hundred sixteen of this chapter and subdivision (e) of this section, upon receipt of a claim for refund in processible form, interest shall be allowed or paid at the overpayment rate set by the commissioner pursuant to section eleven hundred forty-two of this article, or if no rate is set, at the rate of six percent per annum, from the due date of the return or the actual filing date of the return, whichever is later, to the date immediately preceding the date of the refund check except no interest shall be allowed or paid if the refund check is mailed within thirty days of such receipt (except in case of organizations described in paragraph four of subdivision (a) of section eleven hundred sixteen of this chapter, the relevant period of time shall be forty-five days from the date the application for refund is received in processible form and interest, if allowable, shall apply from the date such application is received in processible form) and no interest shall be allowed or paid upon a credit pursuant to such subdivision and except no interest shall be allowed or paid if the amount thereof would be less than one dollar. Provided, however, the department shall process applications for refund as expeditiously as possible.

§ 1121. Refunds and credits with respect to cigarettes. (a) Retail vendor. (1) A vendor of cigarettes who or which is required to collect the taxes imposed by subdivision (a) of section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter shall be allowed a refund or credit

against the amount of tax collected and required to be remitted to the commissioner pursuant to the provisions of section eleven hundred thirty-seven of this article upon the retail sale of cigarettes in the amount of the tax on such cigarettes prepaid by or passed through to and included in the price paid by such vendor pursuant to the provisions of section eleven hundred three of this article.

(2) A refund or credit shall also be allowed such vendor for the tax prepaid by or passed through to and included in the price paid by such vendor upon any cigarettes pursuant to the provisions of section eleven hundred three of this article if such cigarettes are sold at retail by such vendor under circumstances where the taxes imposed by section eleven hundred five of this article and pursuant to the authority of article twenty-nine of this chapter are not required by the provisions of this article to be collected and remitted upon receipts from a retail sale thereof.

(b) Retail user. A person who or which is required to pay the tax imposed by section eleven hundred ten of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter with respect to the purchase or use of such cigarettes shall be allowed a credit against such tax required to be paid to the commissioner pursuant to such section and article in the amount of the tax prepaid by or passed through to and included in the price paid by such purchaser or user pursuant to the provisions of section eleven hundred three of this article.

(c) Self-use of cigarettes purchased at wholesale. A refund or credit equal to the amount of tax prepaid by or passed through to and included in the price paid by a purchaser or user pursuant to the provisions of section eleven hundred three of this article with respect to a purchase of cigarettes other than at retail shall be allowed such purchaser or user upon the use of such cigarettes at retail if the purchase or use of such cigarettes by the purchaser or user is exempt pursuant to section eleven hundred fifteen or section eleven hundred sixteen of this article.

(d) Export, destruction, tax paid in error. Whenever any cigarettes upon which the prepaid tax imposed by section eleven hundred three of this article has been paid have been sold and shipped to another state for sale or use there or have become unfit for use or unsalable, or have

been destroyed, or whenever the commissioner shall have determined that any tax required to be prepaid by such section eleven hundred three shall have been paid in error, the agent or dealer, as the case may be, shall be entitled to a refund or credit of the actual amount of prepaid tax so paid with respect to cigarettes which will not be possessed for sale or use in this state.

(e) Refunds of the tax required to be prepaid pursuant to the provisions of section eleven hundred three of this article shall be allowed only to the extent such tax paid by or passed through to the retail vendor, or the purchaser or user, exceeds the amount of tax required to be collected from such person or required to be remitted by the provisions of this article and pursuant to the authority of article twenty-nine of this chapter.

(f) A refund or credit shall be allowed under this section only to the extent that the tax required to be prepaid pursuant to section eleven hundred three of this article has been prepaid by or passed through to such vendor, purchaser or user, but only to the extent that the tax imposed by section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter together with the tax imposed by section eleven hundred ten of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter required to be paid, collected and remitted has been paid, collected and remitted.

(g) Such refunds and credits shall be subject to the provisions of sections eleven hundred nineteen and eleven hundred thirty-nine of this article as if such sections were incorporated in full into this section and had expressly referred to the refunds and credits authorized by this section including the periods of limitations on payments and applications to the commissioner; provided, however, that, as provided in subdivision (e) of section eleven hundred thirty-nine of this article, no interest shall be allowed or paid upon any refund made or credit allowed pursuant to subdivisions (a), (b) and (d) of this section. The commissioner shall process applications for refund as expeditiously as possible.

§ 1122. Exemption from tax on amusement charges. (a) Seventy-five

percent of the amount of the admission charge to a qualifying place of amusement shall be exempt from the tax imposed by paragraph one of subdivision (f) of section eleven hundred five of this article. A place of amusement shall be a qualifying place of amusement if:

(1) it exists on a year-round basis (whether or not it is open year round) at a fixed location in the state;

(2) the admission charge to such place entitles patrons, without additional charge, to ride at least seventy-five percent of the amusement rides located at such place;

(3) the combined geographic area of the amusement rides located at such place, including all fenced-in ride areas, walkways to and among the rides, areas where patrons wait in line for the rides and all buildings, structures, machinery, equipment and ancillary facilities associated with the rides equals at least fifty percent of the entire geographic area of such place; and

(4) it provides to each person to whom it delivers tickets for admission to such place a ticket or paper receipt stating the amount of the admission charges paid by such person and the tax due thereon.

The "entire geographic area of such place" shall include only areas within the perimeter fencing of such place which are generally accessible to the public and which are accessible only by paying the charge for admission to such place and shall exclude administrative areas, parking lots, hotels, campgrounds and picnic areas, lakes, woodlands and other undeveloped areas and areas devoted to retail activities, such as games, arcades and food, beverage, souvenir and merchandise sales. "Amusement rides" shall include roller coasters, ferris wheels, carousels, water slides and all other amusement rides and water rides. If a qualifying place of amusement also offers "admission-only" tickets entitling patrons to be admitted to such place, but not to use the amusement rides at such place, this subdivision will not apply to the admission charges for such "admission-only" tickets.

(b) (1) A place of amusement which begins admitting patrons during a year shall not, in its first year of operation, be excluded from classification as a qualifying place of amusement, as described in subdivision (a) of this section, because it has not existed on a year round basis, so long as it admits patrons for the balance of that year

(or the remainder of the applicable season in that year if the place closes seasonally, such as during winter months) and years thereafter and the other conditions in such subdivision (a) are met.

(2) A place of amusement shall not, in its final year of operation, be excluded from classification as a qualifying place of amusement, as described in subdivision (a) of this section, because it does not exist on a year round basis in that year so long as it admits patrons for the portion of the final year that it is open and the other conditions in such subdivision (a) are met.

(c) Nothing in this section shall be construed as imposing tax on an admission charge to a patron for admission to or use of, facilities for sporting activities in which such patron is to be a participant.

§ 1123. Exemption from tax on the charge of a roof garden, cabaret or other similar place. The portion of the amount paid as the charge of a roof garden, cabaret or other similar place in the state for admission to attend a dramatic or musical arts performance at the place shall be exempt from the tax imposed by paragraph three of subdivision (f) of section eleven hundred five of this article but only if:

(a) the recipient states the charge for such admission separately from all other portions of such amount;

(b) either (i) the separately stated charges for food, drink, service and merchandise are not less on a day when such place offers such a performance as on a day when such place does not offer such performance or (ii) if such place is open for business only when it offers such a performance, it separately states its charges for food, drink, service and merchandise and such separately stated charges are comparable to charges for comparable food, drink, service and merchandise at other such places and restaurants and taverns in the United States census bureau metropolitan statistical area in which such place is located or in an immediately adjacent metropolitan statistical area or in a comparable area if such place is not located in a metropolitan statistical area; and

(c) such place retains and makes available to the commissioner menus and any other statements of its charges, showing all of its charges for food, drink, service, merchandise and admission, as part of the records

required to be kept under section eleven hundred thirty-five of this article.

PART IV -- ADMINISTRATIVE PROVISIONS

§ 1131. Definitions. When used in this part IV,

(1) "Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; every operator of a hotel or short term rental unit; every booking service with respect to the rent for every occupancy of a short term rental unit it facilitates as described in paragraph ten of subdivision (c) of section eleven hundred one of this article; and every marketplace provider with respect to sales of tangible personal property it facilitates as described in paragraph one of subdivision (e) of section eleven hundred one of this article. Said terms shall also include any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article, or has so acted; and any member of a partnership or limited liability company. Provided, however, that any person who is a vendor solely by reason of clause (D) or (E) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall not be a "person required to collect any tax imposed by this article" until twenty days after the date by which such person is required to file a certificate of registration pursuant to section eleven hundred thirty-four of this part. Such terms shall not include an operator of a short term rental unit who rents out the operator's own property for three days or fewer in a calendar year and does not use a booking service to facilitate such rental.

(2) "Customer" shall include: every purchaser of tangible personal property or services; every patron paying or liable for the payment of

any amusement charge; and every occupant of a room or rooms in a hotel or short term rental unit.

(3) "Tax" shall include any tax imposed by sections eleven hundred five, or eleven hundred ten, and any amount payable to the tax commission by a person required to file a return, as provided in section eleven hundred thirty-seven.

(4) "Property and services the use of which is subject to tax" shall include: (a) all property sold to a person within the state, whether or not the sale is made within the state, the use of which property is subject to tax under section eleven hundred ten of this article or will become subject to tax when such property is received by or comes into the possession or control of such person within the state; (b) all information services, protective and detective services and interior decorating and design services as such services are described in subdivision (c) of section eleven hundred five of this article, rendered to a person within the state, whether or not such services are rendered from or at a location within the state; (c) all services rendered to a person within the state, whether or not such services are performed within the state, upon tangible personal property the use of which is subject to tax under section eleven hundred ten of this article or will become subject to tax when such property is received by or comes into possession or control of such person within the state; (d) all property sold by a person making sales described in clause (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article to a person described in such clause (F) who purchases such property at retail, whether or not the sale is made within the state; (e) all telephone answering service rendered to a person within the state, whether or not such services are performed within the state, the use of which is subject to tax under section eleven hundred ten of this article or will become subject to tax when such service is received by or comes into possession or control of such person within the state; (f) all prepaid telephone calling services sold to a person within the state, whether or not the sale is made within the state, the use of which services are subject to tax under section eleven hundred ten of this article or will become subject to tax when such services are received by or come into the possession or control of such person within the state, and whether or not such services are rendered from or at a

location within the state; and (g) all gas or electricity sold to a person within the state, whether or not the sale is made within the state, the use of which is subject to tax under section eleven hundred ten of this article or will become subject to tax when it is received by or comes into the possession or control of such person within the state, and whether or not it is rendered from or at a location within the state.

(5) "Show promoter" shall include any person who, either directly or indirectly, rents, leases or grants a license to use space to any person for the display for sale or for the sale of tangible personal property or services subject to tax, at more than three shows during the calendar year, or who operates more than three shows during the calendar year. For purposes of determining whether three shows have been held, the conduct of an activity described in subdivision six on one day alone or on a series of up to seven consecutive days shall be deemed to constitute a single show.

(6) "Show" shall include a flea market, craft show, antique show, coin show, stamp show, comic book show, fair and any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax.

(7) "Show vendor" shall include any person who displays for sale or sells, at a show, tangible personal property or services subject to tax.

(8) "Entertainment promoter" shall include any person who either directly or indirectly rents, leases or grants a license to use space to an entertainment vendor at the facility or site of an entertainment event, or who under any other arrangement authorizes such a vendor to sell tangible personal property at such facility or site, and any person who has any management responsibility with respect to such a vendor making such sales at such an event. "Entertainment promoter" shall include the owner or operator of any facility or site where an entertainment event is held and where sales are made by an entertainment vendor. Where two or more persons are entertainment promoters with respect to the same entertainment event, any requirement imposed on an entertainment promoter under this article which is an obligation or responsibility imposed solely on entertainment promoters shall be deemed to be satisfied with respect to such entertainment event, when any one

such promoter complies with any such requirement.

(9) "Entertainment event" shall include concerts, athletic contests or exhibitions, other than amateur sports competition, and other similar forms of entertainment, irrespective of both the kind of facility or site where such event is held and whether such event has an admission charge subject to tax, where the person or persons performing at such event do not perform on a regular, systematic or recurring basis at the same location. For purposes of this subdivision an event does not occur on a regular, systematic or recurring basis when such event consists of less than four performances in a weekly period by the same person or persons at the same facility or site, or with respect to athletic contests or exhibitions which involve competition between teams, when such competition consists of less than five contests in a yearly period by at least one team at the same facility or site. In order for an event to be an entertainment event, the facility or site where such an event is held must have an attendance capacity of greater than one thousand persons, except that the commissioner may prescribe by regulation for a minimum attendance capacity of greater than one thousand persons.

(10) "Entertainment vendor" shall include any person who makes sales of tangible personal property subject to tax at an entertainment event. Such tangible personal property shall include but is not limited to wearing apparel, recordings, programs, posters, buttons and other paraphernalia or souvenirs sold by such persons.

(11) "Temporary vendor" shall include any person who makes sales of tangible personal property or services subject to tax (other than at a show or entertainment event) in not more than two consecutive quarterly periods in any twelve month period, as such quarterly periods are described in subdivision (b) of section eleven hundred thirty-six of this article.

§ 1132. Collection of tax from customer; proof required for registration of motor vehicles. (a) (1) Except as otherwise permitted in subdivision (d) of section eleven hundred thirty-three of this part, every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or

other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

(2) Notwithstanding any provision of this chapter to the contrary: (i) If a person required to collect tax demonstrates to the satisfaction of the commissioner by June first, of any year that, in any two quarterly periods, as described in subdivision (b) of section eleven hundred thirty-six of this part, within the most recent four consecutive quarterly periods, such person was a materialman within the meaning of section two of the lien law, primarily engaged in selling building materials to contractors, subcontractors or repairmen for the improvement of real property, and authorized by such law to file a mechanics lien upon such real property and improvement, then such person shall, with respect to such sales made through the quarterly period ending the succeeding May thirty-first, collect tax due on such sales, and on sales to such contractors, subcontractors or repairmen of services described in paragraph two or three of subdivision (c) of section eleven hundred five of this article to such building materials, for such purpose and made during such June first through May thirty-first period, at the time and to the extent that such person receives the receipts from, or consideration for, such sales from such contractors, subcontractors or repairmen; provided, however, that if such person receives a portion of such receipts or consideration, such person shall collect the tax due on such portion at the time such portion is received. The taxes imposed by this article on such receipts and consideration shall be deemed not to be imposed, solely for purposes of determining when such person is required to collect and pay over such taxes to the commissioner under section eleven hundred thirty-seven of this part, until such person has received payment of such receipts or consideration in money (or money's worth) from such contractor, subcontractor or repairman. A contractor, subcontractor or repairman who purchases building materials or services from such person pursuant to this subparagraph shall, at the time such contractor, subcontractor or repairman pays any portion of the purchase price, pay to such person the tax due on the portion of the purchase price so paid.

(ii) In the event that a materialman described in subparagraph (i) of this paragraph finances any portion of the receipts or consideration from a sale described in such subparagraph (i), including any tax due thereon, directly or indirectly, with any other person (other than a contractor, subcontractor or repairman described in such subparagraph (i)), whether by assignment of the receivable or debt due, factoring, direct loan or any other means, then such materialman shall be deemed to have received payment of such receipts or consideration in money (or money's worth) from such contractor, subcontractor or repairman and shall be required to pay over tax on such sale with the next return due, with a credit against such tax for any tax already paid over with respect to such sale. Any such amount of tax paid over in accordance with the prior sentence shall be on account of the tax required to be collected on the sale to which it relates and such materialman may take a credit against any tax paid by such contractor, subcontractor or repairman in the future on such sale, to ensure that tax paid over with respect to such sale does not exceed the amount of tax imposed on such sale as if the entire purchase price had been paid at the time of sale.

(iii) A materialman described in subparagraph (i) of this paragraph, who has not collected the tax due on the full purchase price for a sale described in such subparagraph (i) from a contractor, subcontractor or repairman within one year of the date of such sale, shall be required to pay over to the commissioner the tax due on any balance of such full purchase price with such materialman's return for the period which includes the date which is one year after the date of such sale.

(iv) The commissioner may assess additional tax due with respect to a sale described in subparagraph (i) of this paragraph within three years from the date the tax is required to be paid over to the commissioner pursuant to this paragraph; provided, however, that in the case of a willfully false or fraudulent return with intent to evade the tax, or where no return has been filed as prescribed by law, the tax may be assessed at any time.

(v) The other provisions of this article and any provision of law applicable to the taxes imposed by this article shall apply to the materialmen, contractors, subcontractors, repairmen, receipts and consideration described in this paragraph, except to the extent that any such provision is inconsistent with this paragraph.

(b) The commissioner shall by regulation prescribe a method or methods or a schedule or schedules of the amounts to be collected from customers in respect to any receipt, gallon of motor fuel or diesel motor fuel, amusement charge or rent upon which a tax is imposed by this article so as to eliminate fractions of one cent and so that the aggregate collections of taxes by a person required to collect tax shall, as far as practicable, equal four percent of the total receipts, amusement charges or rents of such person, or equal the correct rate per gallon of motor fuel or diesel motor fuel sold by such person, upon whom a tax is imposed by this article or, where a similar tax is imposed under the authority of article twenty-nine of this chapter, equal four percent, or such rate per gallon, plus the rate of tax imposed under the authority of article twenty-nine of the total receipts, amusement charges or rents of, or gallons of motor fuel or diesel motor fuel sold by, such person upon whom a tax is imposed by this article and under the authority of article twenty-nine, so that the tax rate to be applied shall be the sum of the state and local tax rates. Such schedule or schedules may provide that no tax need be collected from the customer upon receipts, amusement charges or rents below a stated sum, and may be amended from time to time so as to accomplish the purposes herein set forth. Such schedule or schedules shall provide that no tax shall be collected from the customer upon receipts from retail sales of tangible personal property which, under the rate imposed by article twenty-eight, together with the rates imposed under the authority of article twenty-nine, produce a tax of five mills or less.

(c) (1) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five, all rents for occupancy of the type mentioned in subdivision (e) of said section, and all amusement charges of any type mentioned in subdivision (f) of said section, are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) or (k) of this section, unless (i) a vendor, not later than ninety days after delivery of the property or the rendition of the

service, shall have taken from the purchaser a resale or exemption certificate in such form as the commissioner may prescribe, signed by the purchaser and setting forth the purchaser's name and address and, except as otherwise provided by regulation of the commissioner, the number of the purchaser's certificate of authority, together with such other information as the commissioner may require, to the effect that the property or service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen, and, where such resale or exemption certificate requires the inclusion of the purchaser's certificate of authority number or other identification number required by regulations of the commissioner, that the purchaser's certificate of authority has not been suspended or revoked and has not expired as provided in section eleven hundred thirty-four, or (ii) the purchaser, not later than ninety days after delivery of the property or the rendition of the service, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail. Where a resale or exemption certificate or an affidavit, statement or additional evidence referred to in the previous sentence is received within the time limit set forth therein, but is deficient in some material manner, and where such deficiency is thereafter removed, the receipt of such resale or exemption certificate or such affidavit, statement or additional evidence shall be deemed to have satisfied all of the requirements of the preceding sentence. Where such a resale or exemption certificate or such an affidavit, statement or additional evidence has been furnished to the vendor, the burden of proving that the receipt, amusement charge or rent is not taxable hereunder shall be solely upon the customer. The vendor shall not be required to collect tax from purchasers who furnish a resale or exemption certificate, or such an affidavit, statement or additional evidence in proper form, unless, in the case of a resale or exemption certificate described in clause (i) of the second sentence of this paragraph whereon the purchaser's certificate of authority number, or other identification number required by regulation of the commissioner, is required to be included, such purchaser's certificate of authority is invalid because

it has been suspended or revoked as provided in section eleven hundred thirty-four, and the commissioner has furnished registered vendors with information identifying those persons whose certificates of authority have been suspended or revoked, or unless such purchaser's certificate of authority is invalid because it has expired, and the commissioner has provided registered vendors with a means of determining whether such expiration has occurred. Where the vendor accepts such a resale or exemption certificate from a person identified by the commissioner as one whose certificate of authority has been suspended or revoked or from a person whose certificate of authority has been identified as having expired, the receipt, amusement charge or rent from such transaction shall be deemed to be a taxable sale at retail.

(2) Notwithstanding paragraph one of this subdivision or any other law to the contrary, the commissioner may authorize a purchaser, who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. Subject to such reasonable conditions as the commissioner may require, the commissioner shall authorize an omnibus carrier described in subdivision (b) of section eleven hundred nineteen to pay the tax on the purchase or use of an omnibus directly to the commissioner and waive the collection of the tax by the vendor. No such authority shall be granted or exercised except upon application to the commissioner, and the issuance by the commissioner, in the commissioner's discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the commissioner by the permit holder. The commissioner may suspend or revoke a direct payment permit where the permit holder fails to comply with any of the provisions of this article or any rule promulgated by the commissioner with respect to this article. The notice and hearing provisions applicable to the revocation and suspension of certificates of authority under section eleven hundred thirty-four shall apply to the suspension and revocation of direct payment permits. A vendor shall not be required to collect tax from a purchaser who furnishes a direct

payment permit in proper form, unless such purchaser's direct payment permit has been suspended or revoked by the commissioner and the commissioner has provided registered vendors with information identifying those persons whose direct payment permits have been suspended or revoked. Where a vendor accepts a direct payment permit from a person whose direct payment permit has been suspended or revoked, and the commissioner has provided registered vendors with information identifying those persons whose direct payment permits have been suspended or revoked, the receipt, amusement charge or rent from such transaction shall be deemed to be subject to tax.

(d) The tax commission may provide by regulation that the tax upon receipts from sales on the installment plan may be paid on the amount of each installment and upon the date when such installment is due.

(e) The commissioner may provide, by regulation, for the exclusion from taxable receipts, gallons of motor fuel or diesel motor fuel sold, amusement charges or rents of amounts representing sales where the contract of sale has been cancelled, the property returned or the receipt, charge or rent has been ascertained to be uncollectible or, in case the tax has been paid upon such receipt, gallons, charge or rent, for refund of or credit for the tax so paid. Where the commissioner provides for a credit for the tax so paid, he or she shall require an application for credit to be filed, but he or she may also allow the applicant to immediately take the credit on the return which is due coincident with or immediately subsequent to the time the applicant files his or her application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in section eleven hundred thirty-nine of this part as provided in subdivision (e) of such section.

(f) The commissioner of motor vehicles shall not issue a registration certificate for any motor vehicle, snowmobile, vessel or all terrain vehicle, except in the case of a renewal of registration by the same owner, except upon proof, in a form approved by the tax commission and the commissioner of motor vehicles, that any tax imposed by section eleven hundred five or eleven hundred ten of this article with respect to the sale of the motor vehicle, snowmobile, vessel or all terrain vehicle to the registrant or his use thereof has been paid, or that no

such tax is due. For purposes of this subdivision, the term motor vehicle shall include a motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law; a trailer as defined in section one hundred fifty-six of such law; a snowmobile as defined in section twenty-two hundred twenty-one of such law; a vessel as defined in section twenty-two hundred fifty of such law; and an all terrain vehicle as defined in section twenty-two hundred eighty-one of such law.

(g) (1) The clerk of each county when performing the function of registration of a motor vehicle, snowmobile, vessel or all terrain vehicle or accepting an application for a certificate of title of a motor vehicle or vessel, pursuant to the authority of the vehicle and traffic law, or the commissioner of motor vehicles, when such commissioner performs such functions, prior to performing such functions, shall act as the agent of the state tax commission to collect any retail sales tax due under this article and under a sales tax imposed pursuant to section twelve hundred ten or twelve hundred eleven upon sales of such motor vehicles, snowmobiles, vessels or all terrain vehicles by persons other than dealers registered under sections four hundred fifteen, twenty-two hundred twenty-two, twenty-two hundred fifty-seven and twenty-two hundred eighty-two of the vehicle and traffic law. Such county clerks and such commissioner shall also act as such agents to collect any compensating use tax due under section eleven hundred ten and under a compensating use tax imposed pursuant to section twelve hundred ten or twelve hundred eleven for the use of a motor vehicle, snowmobile, vessel or all terrain vehicle within this state. The commissioner of motor vehicles shall act as such agent without fee. Each such county clerk shall, after deducting his fee as provided in paragraph two of this subdivision, and such commissioner shall remit to the tax commission all funds collected pursuant to this subdivision and shall follow such procedures and keep such records as shall be prescribed by the tax commission.

(2) Each such county clerk shall retain, from the state and local sales and compensating use taxes which he collects, the sum of one dollar for each of the first five thousand motor vehicles or all terrain vehicles in respect to which he has issued a certificate setting forth the proof required by subdivision (f) of this section and subdivision (d) of section twelve hundred fourteen of this chapter during each

annual period commencing on the first day of September and ending on the next succeeding thirty-first day of August and the sum of seventy-five cents for each motor vehicle or all terrain vehicle in excess of five thousand for which he has issued such a certificate during such annual period. Each such county clerk shall also retain, from the state and local sales and compensating use taxes he collects, the sum of fifty cents for each snowmobile and vessel in respect to which he has issued a certificate setting forth the proof required by subdivision (f) of this section and subdivision (d) of section twelve hundred fourteen of this chapter. Such fees shall be payable even though the certificate issued shows that no tax is due. Such fees shall belong to the county and be paid into the county treasury monthly on or before the tenth day of the month pursuant to section two hundred one of the county law. The county shall pay all expenses occasioned by the duties of the county clerk under this subdivision, including any expenses for hire of extra clerks.

(h) (1) (i) No person shall purchase motor fuel in this state, excluding a purchase at retail, unless the tax required to be prepaid by subdivision (a) of section eleven hundred two of this article has been assumed by a distributor registered under article twelve-A of this chapter in accordance with a certification under this paragraph or paid by such distributor, and, in each of such instances, is passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases motor fuel in violation of this subparagraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred two of this article with respect to such motor fuel.

(ii) For the purpose of the proper administration of this article and to prevent evasion of the tax on motor fuel imposed by and pursuant to this article, it shall be presumed that all motor fuel imported, manufactured or sold, received or possessed in the state is intended for use, distribution, storage or sale in the state and subject to the tax required to be prepaid by section eleven hundred two of this article until the contrary is established. It shall be further presumed that all motor fuel so imported, manufactured, sold, received or possessed in the state by any person, other than motor fuel delivered into the ordinary fuel tank connected with the engine of a means of conveyance in order to propel it, or in small drums or similar containers, which such person

cannot otherwise account for, is subject to the tax required to be prepaid under section eleven hundred two of this article and such person is responsible for such prepayment. Provided, however, a distributor of motor fuel who imports, manufactures or sells and stores in the state or who purchases and stores motor fuel in the state on which he has prepaid the tax required to be prepaid pursuant to section eleven hundred two of this article shall be allowed an adjustment in arriving at the gallons subject to the taxes imposed by such section on account of the gallons the distributor establishes were lost due to shrinkage, evaporation and handling; provided, however, such allowance shall not exceed two percent of the fuel stored. Provided, further, that in arriving at the gallons of motor fuel subject to the tax required to be prepaid pursuant to section eleven hundred two of this article, there shall be allowed an adjustment on account of gallons lost or destroyed due to an accident, such as fire, and at the time of such loss or destruction were being held or transported for sale other than at retail. The burden of proving that any motor fuel is not so subject shall be upon the person so responsible for such prepayment with respect to such fuel.

(iii) Upon each sale of motor fuel, other than a sale at retail, the seller must give to the purchaser and the purchaser shall receive, at the time of delivery of such motor fuel, a certification containing such information as the tax commission shall require which shall include a statement to the effect (A) if such seller is a distributor registered under article twelve-A of this chapter, that he has assumed the payment of or paid the tax required to be prepaid by section eleven hundred two of this article and, in each case, is passing through such tax or (B) that such seller is passing through such tax which was so previously assumed or paid by an identified distributor registered under article twelve-A of this chapter, and passed through to him.

(iv) If the certification required by this paragraph has been furnished to the purchaser by the seller at delivery and accepted in good faith, the burden of proving that the tax required to be paid by section eleven hundred two of this article was assumed or paid by a distributor registered as such under article twelve-A of this chapter and passed through shall be solely on the seller.

(v) Where the certification required under this paragraph is not furnished by the seller at delivery of motor fuel, it shall be presumed

that the tax required to be prepaid by section eleven hundred two of this article has not been assumed or paid by a distributor registered as such under article twelve-A of this chapter and that the purchaser in such case is jointly and severally liable for the tax.

(vi) If, due to the circumstances of delivery, it is not possible to issue a certification required under this paragraph at the time of delivery of motor fuel, the tax commission may authorize the delivery of the certification required under this paragraph at a time after the delivery of the motor fuel which is the subject of the sale under the limited circumstances it shall prescribe and upon such terms and conditions it shall deem necessary to ensure collection of the tax imposed by section eleven hundred two of this article and the motor fuel taxes imposed by article twelve-A of this chapter.

(2) (i) Except with respect to the exemptions from the prepaid tax on Diesel motor fuel set forth in paragraph two of subdivision (a) of section eleven hundred two of this article, no person shall purchase Diesel motor fuel in this state unless the prepaid tax has been assumed by a registered distributor of Diesel motor fuel in accordance with a certification under this paragraph or paid by such distributor and, in each of such instances, except in the case of a purchase at retail, are passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases Diesel motor fuel without having received a certification from the seller in accordance with this paragraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred two of this article with respect to such Diesel motor fuel.

(ii) For purposes of the proper administration of this article and to prevent evasion of the taxes imposed on Diesel motor fuel by this article, it shall be presumed that all Diesel motor fuel sold, received or possessed in the state is subject to the taxes imposed by this article until the contrary is established. It shall be further presumed that any person so selling, receiving or possessing such Diesel motor fuel is responsible for payment of the excise taxes on such fuel.

(iii) The exemption from the tax required to be prepaid by section eleven hundred two of this article provided for in paragraph two of subdivision (a) of section eleven hundred two of this article shall be established by means of an interdistributor sale certificate. If such

exemption is applicable, such certificate shall be provided by the purchaser to the seller at the time of or prior to delivery of the Diesel motor fuel. Such certificate shall set forth the name and address of the purchaser, the purchaser's registration number, an affirmation by such purchaser that the purchaser is registered as a distributor of Diesel motor fuel and that such registration has not been suspended or cancelled and shall be signed by such purchaser and by the seller. Such certificate shall be in such form and contain such other information as the commissioner of taxation and finance shall require. Where a proper and complete interdistributor sale certificate has been furnished and accepted by the seller in good faith, such certificate under such circumstance shall relieve the seller of the burden of proving that the Diesel motor fuel covered by such certificate is exempt from the tax required to be prepaid by section eleven hundred two of this article by reason of paragraph two of subdivision (a) of section eleven hundred two of this article. For purposes of this subparagraph, a seller shall not have accepted such certificate in good faith if the purchaser's registration is invalid because it has been suspended or cancelled, or if the purchaser is not registered, and the commissioner of taxation and finance has furnished registered distributors with information identifying all those persons then validly registered as distributors of Diesel motor fuel and those persons whose registrations have been suspended or cancelled. Any purchaser who furnishes to his seller a false or fraudulent interdistributor sale certificate for the purpose of establishing an exemption from the tax required to be prepaid by section eleven hundred two of this article shall be jointly and severally liable for the tax imposed by such section.

(iv) (A) Upon each sale, other than a retail sale at a filling station, the seller must give to the purchaser and the purchaser shall receive at the time of delivery of such Diesel motor fuel, a certification containing such information as the commissioner of taxation and finance shall require which, unless otherwise provided in this paragraph, shall include a statement to the effect: (i) if such seller is a distributor registered under article twelve-A of this chapter, that he has assumed the payment of or paid the taxes imposed by this article and, in each case, is passing through such taxes; (ii) that such seller is passing through such taxes which were so previously

assumed or paid by an identified distributor registered under article twelve-A of this chapter, and passed through to him; or (iii) if such seller is making a retail sale to a purchaser, that such taxes are not being passed through on the retail sale of Diesel motor fuel, in accordance with subparagraph (i) of this paragraph. In the case of a sale of Diesel motor fuel described in paragraph two of subdivision (a) of section eleven hundred two of this article which is exempt from the tax required to be prepaid by section eleven hundred two, the certificate, in lieu of the foregoing statements, shall state that, based upon good faith reliance on the interdistributor sales certificate, such Diesel motor fuel is being sold under the circumstances described in such paragraph two of subdivision (a) of section eleven hundred two and that the tax imposed by section eleven hundred two of this article is not applicable.

(B) In the case of a sale of Diesel motor fuel subject to the tax required to be prepaid by section eleven hundred two of this article and in all cases where such tax is required to be passed through, if the certification required by this subparagraph has been furnished to the purchaser at the time of delivery of such fuel and accepted in good faith, the burden of proving that the tax required to be prepaid by section eleven hundred two of this article was assumed or paid by a distributor registered as such under article twelve-A of this chapter and passed through shall be solely on the seller.

(C) Where the certification required under this subdivision is not furnished by the seller at the time of delivery of the Diesel motor fuel, it shall be presumed that the tax required to be prepaid by section eleven hundred two of this article is due and owing and has not been assumed or paid by a distributor registered as such under article twelve-A of this chapter and that the purchaser in such case is jointly and severally liable for the tax.

(D) If, due to the circumstances of delivery, it is not possible to issue a certification required under this subdivision at the time of delivery of Diesel motor fuel, the commissioner of taxation and finance may authorize the delivery of the certification required under this subdivision at a time after the delivery of the Diesel motor fuel which is the subject of the sale under the limited circumstances he shall prescribe and upon such terms and conditions he shall deem necessary to

ensure collection of the tax imposed by section eleven hundred two of this article and the Diesel motor fuel taxes imposed by article twelve-A of this chapter.

(3) (i) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all retail sales of motor fuel or diesel motor fuel are subject to the tax required to be collected by subdivision (a) of section eleven hundred five of this article or paid by the provisions of section eleven hundred ten of this article until the contrary is established, and it shall be presumed that all motor fuel or diesel motor fuel imported, manufactured, sold, received or possessed by any person in this state, which such person cannot otherwise account for as having been sold subject to the tax required to be collected by subdivision (a) of section eleven hundred five or paid by the provisions of section eleven hundred ten of this article, has been sold subject to the tax required to be collected by subdivision (a) of section eleven hundred five or paid by the provisions of section eleven hundred ten except that no such presumption shall apply with respect to motor fuel or diesel motor fuel in the fuel tank of a motor vehicle used to propel such vehicle or to motor fuel in small drums or similar containers. The burden of proving that any sale is not so subject shall be upon the person required to collect such tax and the purchaser of such fuel.

(ii) Unless the vendor has received from the purchaser a statement or certificate in such form as the commissioner may require, that the purchaser pursuant to the provisions of subdivision (a) of section eleven hundred five-A, subdivision (j) of section eleven hundred fifteen or subdivision (b) of section eleven hundred sixteen of this article is not subject to the provisions of this paragraph, such sale shall be deemed a sale subject to the provisions of sections eleven hundred five and eleven hundred ten of this article notwithstanding any provision of subdivision (c) of this section.

(iii) Where any certificate or statement required under this paragraph has been furnished to the vendor and accepted in good faith, the burden of proving that the receipt is not taxable hereunder shall be solely upon the purchaser. The vendor shall not be required to collect such taxes from purchasers who furnish such certificates or statements in proper form.

(i) The commissioner shall, by regulation, provide for a certificate which must be furnished by a purchaser of a large volume of motor fuel or diesel motor fuel who or which is commonly referred to as a commercial account where such purchase is for consumption by such purchaser and is not resold in order for the sales tax on such sale to be based on the actual receipts therefor.

(k) (1) (i) No person shall purchase cigarettes in this state, other than in a purchase at retail, unless the tax required to be prepaid by subdivision (a) of section eleven hundred three of this article has been paid by an agent and passed through by such agent and by a wholesale dealer or retail dealer, authorized, licensed or registered under article twenty of this chapter, in accordance with a certification under this paragraph or paid by such agent, wholesale dealer or retail dealer, and, in each of such instances, is passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases cigarettes in violation of this subparagraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred three of this article with respect to such cigarettes.

(ii) For the purpose of the proper administration of this article and to prevent evasion of the tax on sales and uses of cigarettes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, it shall be presumed that all cigarettes possessed in this state, other than four hundred or fewer cigarettes brought into the state by, or in the possession of, any person, are intended for sale or use in the state and subject to the tax required to be prepaid by section eleven hundred three of this article until the contrary is established and that such person is responsible for such prepayment.

(iii) Upon each sale of cigarettes, other than a sale at retail, the seller must give to the purchaser and the purchaser shall receive, at the time of delivery of such cigarettes, a certification containing such information as the commissioner shall require which shall include a statement to the effect (A) if such seller is an agent under article twenty of this chapter, that such agent has paid the amount of tax required to be prepaid by section eleven hundred three of this article and is passing through such amount of tax, or (B) that such seller is passing through such amount of tax which was so previously assumed or

paid by an agent under article twenty of this chapter identified on such certification, and passed through to such seller.

(iv) If the certification required by this paragraph has been furnished to the purchaser by the seller at delivery and accepted in good faith on cigarettes bearing a cigarette tax stamp under article twenty of this chapter and this article of an issue currently in effect, the burden of proving that the tax required to be paid by section eleven hundred three of this article was assumed or paid by an agent licensed as such under article twenty of this chapter and passed through shall be solely on the seller.

(v) Where the certification required under this paragraph is not furnished by the seller to the purchaser at delivery of cigarettes, it shall be presumed that no amount of tax required to be prepaid by section eleven hundred three of this article has been paid by an agent authorized as such under article twenty of this chapter and that the purchaser in such case is jointly and severally liable for the tax imposed by such section eleven hundred three.

(2) (i) For the purpose of the proper administration of this article and to prevent evasion of the tax imposed under this article, it shall be presumed that all retail sales of cigarettes are subject to the tax imposed by subdivision (a) of section eleven hundred five and required to be collected by section eleven hundred thirty-two of this article or required to be paid by the provisions of section eleven hundred ten of this article until the contrary is established; and it shall be presumed that all cigarettes possessed in this state, which such person cannot otherwise account for as having been sold subject to the tax imposed by subdivision (a) of section eleven hundred five and required to be collected by section eleven hundred thirty-two or required to be paid by the provisions of section eleven hundred ten of this article, have been sold subject to the tax imposed by subdivision (a) of section eleven hundred five and required to be collected by section eleven hundred thirty-two or required to be paid by the provisions of section eleven hundred ten, except that no such presumption shall apply with respect to four hundred or fewer cigarettes brought into the state by, or in the possession of, any person. The burden of proving that any sale is not so subject to tax shall be upon the person required to collect such tax and the purchaser or user of such cigarettes.

(ii) Unless the vendor has received from the purchaser a statement or certificate, in such form as the commissioner may require, that the purchaser pursuant to the provisions of paragraph six of subdivision (b) of section eleven hundred sixteen of this article is not subject to the provisions of this paragraph, such sale shall be deemed a sale subject to the provisions of sections eleven hundred five and eleven hundred ten of this article notwithstanding any provision of subdivision (c) of this section.

(iii) Where any certificate or statement required under this paragraph has been furnished to the vendor and accepted in good faith, the burden of proving that the receipt is not taxable hereunder shall be solely upon the purchaser. The vendor shall not be required to collect such taxes from purchasers who furnish such certificates or statements in proper form.

(l)(1) A marketplace provider with respect to a sale of tangible personal property it facilitates: (A) shall have all the obligations and rights of a vendor under this article and article twenty-nine of this chapter and under any regulations adopted pursuant thereto, including, but not limited to, the duty to obtain a certificate of authority, to collect tax, file returns, remit tax, and the right to accept a certificate or other documentation from a customer substantiating an exemption or exclusion from tax, the right to receive the refund authorized by subdivision (e) of this section and the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part subject to the provisions of such subdivisions; and (B) shall keep such records and information and cooperate with the commissioner to ensure the proper collection and remittance of tax imposed, collected or required to be collected under this article and article twenty-nine of this chapter.

(2) A marketplace seller who is a vendor is relieved from the duty to collect tax in regard to a particular sale of tangible personal property subject to tax under subdivision (a) of section eleven hundred five of this article and shall not include the receipts from such sale in its taxable receipts for purposes of section eleven hundred thirty-six of this part if, in regard to such sale: (A) the marketplace seller can show that such sale was facilitated by a marketplace provider from whom such seller has received in good faith a properly completed certificate

of collection in a form prescribed by the commissioner, certifying that the marketplace provider is registered to collect sales tax and will collect sales tax on all taxable sales of tangible personal property by the marketplace seller facilitated by the marketplace provider, and with such other information as the commissioner may prescribe; and (B) any failure of the marketplace provider to collect the proper amount of tax in regard to such sale was not the result of such marketplace seller providing the marketplace provider with incorrect information. This provision shall be administered in a manner consistent with subparagraph (i) of paragraph one of subdivision (c) of this section as if a certificate of collection were a resale or exemption certificate for purposes of such subparagraph, including with regard to the completeness of such certificate of collection and the timing of its acceptance by the marketplace seller. Provided that, with regard to any sales of tangible personal property by a marketplace seller that are facilitated by a marketplace provider who is affiliated with such marketplace seller within the meaning of paragraph one of subdivision (e) of section eleven hundred one of this article, the marketplace seller shall be deemed liable as a person under a duty to act for such marketplace provider for purposes of subdivision one of section eleven hundred thirty-one of this part.

(3) The commissioner may, in his or her discretion: (A) develop a standard provision, or approve a provision developed by a marketplace provider, in which the marketplace provider obligates itself to collect the tax on behalf of all the marketplace sellers for whom the marketplace provider facilitates sales of tangible personal property, with respect to all sales that it facilitates for such sellers where delivery occurs in the state; and (B) provide by regulation or otherwise that the inclusion of such provision in the publicly-available agreement between the marketplace provider and marketplace seller will have the same effect as a marketplace seller's acceptance of a certificate of collection from such marketplace provider under paragraph two of this subdivision.

(m) (1) A booking service with respect to a sale for every occupancy of a short term rental unit it facilitates: (A) shall have all the obligations and rights of a vendor under this article and article twenty-nine of this chapter and under any regulations adopted pursuant

thereto, including, but not limited to, the duty to obtain a certificate of authority, to collect tax, file returns, remit tax, and the right to accept a certificate or other documentation from a customer substantiating an exemption or exclusion from tax, the right to receive the refund authorized by subdivision (e) of this section and the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part subject to the provisions of such subdivisions; and (B) shall keep such records and information and cooperate with the commissioner to ensure the proper collection and remittance of tax imposed, collected, or required to be collected under this article and article twenty-nine of this chapter.

(2) An operator is relieved from the duty to collect tax in regard to a particular rent for the occupancy of a short term rental unit subject to tax under subdivision (e) of section eleven hundred five of this article and shall not include the rent from such occupancy in its taxable sales for purposes of section eleven hundred thirty-six of this part if in regard to such occupancy:

(A) the operator of the short term rental can show that such occupancy was facilitated by a booking service from whom such operator has received in good faith a properly completed certificate of collection in a form prescribed by the commissioner certifying that the booking service is registered to collect sales tax and will collect sales tax on all taxable sales of occupancy of a short term rental unit by the operator facilitated by the booking service, and with such other information as the commissioner may prescribe; and

(B) any failure of the booking service to collect the proper amount of tax in regard to such sale was not the result of such operator providing the booking service with incorrect information.

This provision shall be administered in a manner consistent with subparagraph (i) of paragraph one of subdivision (c) of this section as if a certificate of collection were a resale or exemption certificate for purposes of such subparagraph, including with regard to the completeness of such certificate of collection and the timing of its acceptance by the operator. Provided that with regard to any sales of occupancy of a short term rental unit by an operator that are facilitated by a booking service who is affiliated with such operator

within the meaning of paragraph ten of subdivision (c) of section eleven hundred one of this article, the operator shall be deemed liable as a person under a duty to act for such booking service for purposes of subdivision one of section eleven hundred thirty-one of this part.

(3) The commissioner may, at their discretion: (A) develop a standard provision, or approve a provision developed by a booking service, in which the booking service obligates itself to collect the tax on behalf of all operators for whom the booking service facilitates sales of occupancy of a short term rental unit, with respect to all sales that it facilitates for such operators where the rental occurs in the state; and (B) provide by regulation or otherwise that the inclusion of such provision in the publicly-available agreement between the booking service and operator will have the same effect as an operator's acceptance of a certificate of collection from such booking service under paragraph two of this subdivision.

§ 1133. Liability for the tax. (a) Except as otherwise provided in section eleven hundred thirty-seven of this part, every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article. Any such person shall have the same right in respect to collecting the tax from their customer or in respect to nonpayment of the tax by the customer as if the tax were a part of the purchase price of the property or service, amusement charge or rent, as the case may be, and payable at the same time; provided, however, that the tax commission shall be joined as a party in any action or proceeding brought to collect the tax.

(b) Where any customer has failed to pay a tax imposed by this article to the person required to collect the same, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the customer directly to the tax commission and it shall be the duty of the customer to file a return with the tax commission and to pay the tax to it within twenty days of the date the tax was required to be paid.

(c) The tax commission may, whenever it deems it necessary for the proper enforcement of this article, provide by regulation that customers

shall file returns and pay directly to the tax commission any tax herein imposed, at such times as returns are required to be filed and payment made by persons required to collect the tax.

(d) (1) no person required to collect any tax imposed by this article shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this article is not considered as an element in the price, amusement charge or rent payable by customers. However, such person required to collect tax may advertise, hold out, or state to a retail purchaser or to the public, that such person will pay the tax imposed by section eleven hundred five of this article on behalf of a retail purchaser, subject to the following conditions:

(i) In so advertising, holding out, or stating to a retail purchaser or to the public, such person required to collect tax shall expressly state on every bill, memorandum, receipt or other statement of the price, amusement charge or rent paid or payable given to such purchaser, that such person will pay the tax imposed by section eleven hundred five of this article on behalf of such purchaser, and such person shall not indicate or imply that the transaction is exempt or excluded from any tax imposed by this article; and

(ii) Every bill, memorandum, receipt or other statement of the price, amusement charge or rent paid or payable given to such purchaser shall separately state the amount of tax due pursuant to such section eleven hundred five and that the tax was not collected from such purchaser. Such person required to collect tax shall hold such tax as trustee for and on account of the state; and

(iii) A retail purchaser, who in good faith accepts from a person required to collect any tax imposed by this article, a bill, memorandum, receipt or other statement of the price, amusement charge or rent that indicates the amount of tax due pursuant to such section eleven hundred five and that such person required to collect tax will be paying such tax on behalf of such purchaser, shall not be liable for the tax imposed by such section eleven hundred five, or any interest or penalties thereon; provided, however that nothing in this subdivision shall exempt such purchaser from any additional tax due pursuant to section eleven hundred ten of this article.

(e) Applicability of Mobile Telecommunications Sourcing Act. The provisions of sections 119(c), 120, 121 and 122 of title 4 of the United

States Code as enacted and in effect on July twenty-eighth, two thousand, to the extent relevant and to the extent required by preemption, shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of such sections of such title 4 of the United States Code had been incorporated in full into this article and had expressly referred to the taxes under this article, with such modifications as may be necessary in order to adapt the language of such provisions to the taxes imposed by this article.

(f) A marketplace provider is relieved of liability under this section for failure to collect the correct amount of tax to the extent that the marketplace provider can show that the error was due to incorrect or insufficient information given to the marketplace provider by the marketplace seller. Provided, however, this subdivision shall not apply if the marketplace seller and marketplace provider are affiliated within the meaning of paragraph one of subdivision (e) of section eleven hundred one of this article.

(g) A booking service shall be relieved of liability under this section for failure to collect the correct amount of tax to the extent that such booking service can show that the error was due to incorrect or insufficient information given to the booking service by the operator. Provided, however, this subdivision shall not apply if the operator and booking service are affiliated within the meaning of paragraph ten of subdivision (c) of section eleven hundred one of this article.

§ 1134. Registration. (a) (1) (i) Every person required to collect any tax imposed by this article, other than a person who is a vendor solely by reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article, commencing business or opening a new place of business, (ii) every person purchasing or selling tangible personal property for resale commencing business or opening a new place of business, (iii) every person selling petroleum products including persons who or which are not distributors, (iv) every person described in this subdivision who takes possession of or pays for business assets under circumstances requiring

notification by such person to the commissioner pursuant to subdivision (c) of section eleven hundred forty-one of this chapter, (v) every person selling cigarettes including persons who or which are not agents, and (vi) every person described in subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph or every person who is a vendor solely by reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article who or which has had its certificate of authority revoked under paragraph four of this subdivision, shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or opening a new place of business or such purchasing, selling or taking of possession or payment, whichever comes first. Every person who is a vendor solely by reason of clause (D) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which the cumulative total number of occasions that such person came into the state to deliver property or services, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, exceeds twelve. Every person who is a vendor solely by reason of clause (E) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which the cumulative total, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, of such person's gross receipts from sales of property delivered in this state exceeds five hundred thousand dollars and number of such sales exceeds one hundred. Every person who is a vendor solely by reason of clause (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which tangible personal property in which such person retains an ownership interest is brought into this state by the person to whom such property is sold, where the person to whom such property is sold becomes or is a resident or uses such property in any manner in carrying on in

this state any employment, trade, business or profession. Information with respect to the notice requirements of a purchaser, transferee or assignee and such person's liability pursuant to the provisions of subdivision (c) of section eleven hundred forty-one of this chapter shall be included in or accompany the certificate of registration form furnished the applicant. The commissioner shall also include with such information furnished to each applicant general information about the tax imposed under this article including information on records to be kept, returns and payments, notification requirements and forms. Such certificate of registration may be amended in accordance with rules promulgated by the commissioner.

(2) Except as otherwise provided in this section, the commissioner, within five days after receipt of a certificate of registration filed as provided for in paragraph one of this subdivision, shall issue, without charge, to each registrant a certificate of authority empowering the registrant to collect the tax and a duplicate thereof for each additional place of business of such registrant. Such certificate of authority may be issued for a specified term of not less than three years, except that a certificate of authority issued to a show vendor, entertainment vendor or temporary vendor may be issued for a specified term of less than three years. Any certificate of authority referred to in this paragraph shall be subject to renewal in accordance with rules promulgated by the commissioner. Whether or not such certificate of authority is issued for a specified term, such certificate shall be subject to suspension or revocation as provided for in this section. Each certificate or duplicate shall state the place of business to which it is applicable. Such certificate of authority or duplicate shall be prominently displayed in the place of business of the registrant to which it applies. A registrant who has no regular place of doing business shall attach such certificate to each of the registrant's carts, stands, trucks or other merchandising devices. Such certificates of authority and any duplicate shall be nonassignable and nontransferable and shall be surrendered to the commissioner immediately upon the registrant's ceasing to do business at the place named (unless the registrant amends the certificate of registration in accordance with rules promulgated by the commissioner) or in the event that such business never commenced.

(3) A person, other than one described in clauses (A), (B), and (C) of subparagraph (i) of paragraph (8) of subdivision (b) of section eleven hundred one, and other than one described in clause (D), (E) or (F) of such subparagraph who is required to file a certificate of registration with the commissioner, but who makes sales to persons within the state of tangible personal property or services, the use of which is subject to tax under this article, may if such person so elects file a certificate of registration with the commissioner who may, in the commissioner's discretion and subject to such conditions as the commissioner may impose, issue to such person a certificate of authority to collect the compensating use tax imposed by this article.

(4) * (A) Where a person who holds a certificate of authority (i) willfully fails to file a report or return required by this article, (ii) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required under this article which is false, (iii) willfully fails to comply with the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this article, (iv) willfully fails to prepay, collect, truthfully account for or pay over any tax imposed under this article or pursuant to the authority of article twenty-nine of this chapter, (v) fails to obtain a bond pursuant to paragraph two of subdivision (e) of section eleven hundred thirty-seven of this part, or fails to comply with a notice issued by the commissioner pursuant to paragraph three of such subdivision, (vi) has been convicted of a crime provided for in this chapter, (vii) where such person, or any person affiliated with such person as such term is defined in subdivision twenty-one of section four hundred seventy of this chapter, has had a retail dealer registration issued pursuant to section four hundred eighty-a of this chapter revoked pursuant to subparagraph (iii) of paragraph (a) of subdivision four of such section four hundred eighty-a, or (viii) has not obtained a valid retail dealer registration under section four hundred eighty-a of this chapter and such person possesses or sells unstamped or unlawfully stamped packages of cigarettes three or more times within a period of five years, the commissioner may revoke or suspend such certificate of authority and all duplicates thereof. Provided, however, that the commissioner may revoke or suspend a certificate of authority based on (a) the grounds set forth in clause

(vi) of this subparagraph only where the conviction referred to occurred not more than one year prior to the date of revocation or suspension; and provided further that where the commissioner revokes or suspends a certificate of authority based on the grounds set forth in clause (vii) of this subparagraph, such suspension or revocation shall continue for as long as the revocation of the retail dealer registration pursuant to section four hundred eighty-a of this chapter remains in effect, or (b) the grounds set forth in clause (viii) of this subparagraph, such suspension or revocation shall be for a period of five years.

* NB Effective until December 31, 2029

* (A) Where a person who holds a certificate of authority (i) willfully fails to file a report or return required by this article, (ii) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required under this article which is false, (iii) willfully fails to comply with the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this article, (iv) willfully fails to prepay, collect, truthfully account for or pay over any tax imposed under this article or pursuant to the authority of article twenty-nine of this chapter, (v) has been convicted of a crime provided for in this chapter, (vi) where such person, or any person affiliated with such person as such term is defined in subdivision twenty-one of section four hundred seventy of this chapter, has had a retail dealer registration issued pursuant to section four hundred eighty-a of this chapter suspended or revoked pursuant to subparagraph (iii) of paragraph (a) of subdivision four of such section four hundred eighty-a, or (vii) has not obtained a valid retail dealer registration under section four hundred eighty-a of this chapter and such person possesses or sells unstamped or unlawfully stamped packages of cigarettes three or more times within a period of five years, the commissioner may revoke or suspend such certificate of authority and all duplicates thereof. Provided, however, that the commissioner may revoke or suspend a certificate of authority based on (a) the grounds set forth in clause (v) of this subparagraph only where the conviction referred to occurred not more than one year prior to the date of revocation or suspension; and provided further that where the commissioner revokes or suspends a certificate of authority based on the grounds set forth in clause (vi) of this subparagraph, such suspension

or revocation shall continue for as long as the revocation of the retail dealer registration pursuant to section four hundred eighty-a of this chapter remains in effect, or (b) the grounds set forth in clause (vii) of this subparagraph, such suspension or revocation shall be for a period of five years.

* NB Effective December 31, 2029

(B) Where a person files a certificate of registration for a certificate of authority under this subdivision and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, has been finally determined to be due from such person and has not been paid in full, (ii) a tax due under this article or any law, ordinance or resolution enacted pursuant to the authority of article twenty-nine of this chapter has been finally determined to be due from an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or another person and has not been paid, (iii) such person has been convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, (iv) an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, which officer, director, partner, member, manager or employee is a person required to collect tax on behalf of such person filing a certificate of registration has in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or of another person been convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, (v) a shareholder owning more than fifty percent of the number of shares of stock of such person (where such person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, who owned more than fifty percent of the number of such shares of another person (where such other person is a corporation) at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be

due and where such tax has not been paid in full, or at the time such other person was convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, (vi) a certificate of authority issued to such person has been revoked or suspended pursuant to subparagraph (A) of this paragraph within one year from the date on which such certificate of registration is filed, (vii) a retail dealer registration issued pursuant to section four hundred eighty-a of this chapter to such person, or to any person affiliated with such person as such term is defined in subdivision twenty-one of section four hundred seventy of this chapter, has been revoked pursuant to subparagraph (iii) of paragraph (a) of subdivision four of such section four hundred eighty-a, where such revocation remains in effect, or (viii) such person has not obtained a valid retail dealer registration under section four hundred eighty-a of this chapter and has possessed or sold unstamped or unlawfully stamped packages of cigarettes three or more times within a period of five years, the commissioner may refuse to issue a certificate of authority; provided however that under the circumstances described in clause (viii) of this subparagraph, such person shall not be eligible to submit a certificate of registration for a certificate of authority until five years after its last possession or sale of unstamped or unlawfully stamped packages of cigarettes within such five year period.

(C) In any of the foregoing instances where the commissioner may suspend or revoke or refuse to issue a certificate of authority, the commissioner may condition the retention or issuance of a certificate of authority upon the filing of a bond or the deposit of tax in the manner provided in paragraph two or three of subdivision (e) of section eleven hundred thirty-seven.

(D) Notice of proposed revocation, suspension or refusal to issue shall be given to the person holding a certificate of authority issued pursuant to this subdivision or to a person applying for such a certificate in the manner prescribed for a notice of determination of tax and all the provisions of this article applicable to a notice of determination under section eleven hundred thirty-eight shall apply to a notice issued pursuant to this paragraph, insofar as such provisions can be made applicable to the notice authorized by this paragraph, with such modifications as may be necessary in order to adapt the language of such

provisions to the notice authorized by this paragraph. In the case of a person applying for a certificate of authority, a notice of proposed refusal to issue shall be issued within five days after timely registration pursuant to paragraph one of this subdivision. Upon timely application therefor, a hearing shall be scheduled, and within three months from such application for hearing (determined with regard to any postponements of any scheduled hearing or conference made at the request of the applicant), the commissioner shall issue either a notice of refusal or a certificate of authority. If the commissioner fails to issue a notice of refusal within such three month period (or such period as extended pursuant to this subdivision), the commissioner shall immediately upon the conclusion of such period issue a certificate of authority to the applicant. Such notice of proposed revocation or suspension must be given to such person within three years from the date of the act or omission described in subparagraph (A) of this paragraph, except that in the case of acts involving falsity or fraud, such notice may be issued at any time. All of such notices shall contain a statement advising the person to whom it is issued that the suspension, revocation or refusal to issue may be challenged through a hearing process and that the petition for such challenge must be filed with the division of tax appeals within ninety days after the giving of such notice.

(E) After the commissioner has suspended or revoked a person's certificate of authority, by a notice of suspension or revocation, or has refused to issue a certificate of authority, by a notice of refusal, to such person and such decision has become final as provided for in this paragraph, or after a person's certificate of authority has expired and such person has failed to renew such certificate or obtain a new certificate of authority, such person is prohibited from engaging in any business in this state for which a certificate of authority is required. If despite such prohibition such person continues to be so engaged in business, the commissioner may bring an action to enjoin such person from so engaging in business.

(5) If the commissioner considers it necessary for the proper administration of the sales and use taxes and prepaid taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, it may require every person under this section or section twelve hundred fifty-three of this chapter who holds a certificate of

authority to file a new certificate of registration in such form and at such time as the commissioner may prescribe and to surrender such certificate of authority. The commissioner may require such filing and such surrender not more often than once every three years. Upon the filing of such certificate of registration and the surrender of such certificate of authority, the commissioner shall issue, within such time as the commissioner may prescribe, a new certificate of authority, without charge, to each registrant and a duplicate thereof for each additional place of business of such registrant.

(6) By January first, two thousand twenty-two, the department shall create and maintain a publicly accessible, searchable database containing the certificate of authority number and any corresponding identifying information for each vendor in the state.

(7) An operator of a short term rental unit, as defined in paragraph nine of subdivision (c) of section eleven hundred one of this article, shall be relieved of the requirement to register in paragraph one of this subdivision if such operator's sales of occupancy are wholly facilitated by one or more booking services from whom the operator has received in good faith a certificate of collection that meets the requirements set forth in paragraph two of subdivision (m) of section eleven hundred thirty-two of this part or the booking service has included a provision approved by the commissioner in the publicly-available agreement between the booking service and the operator as described in subdivision (m) of section eleven hundred thirty-two of this part.

(b) (1) Every show promoter shall, at least ten days prior to the opening of a show, file with the commissioner of taxation and finance a notice stating the location and dates of such show, in a form prescribed by the commissioner of taxation and finance.

(2) The commissioner of taxation and finance shall, within five days after the receipt of any such notice, issue to the show promoter, without charge, a permit to operate such show, except as provided by paragraph five of this subdivision. No show promoter shall rent, lease or grant a license to use space for a show or operate a show without obtaining such permit. Such permit shall be prominently displayed at the main entrance to the show. However, if a notice required under paragraph one has been properly filed, and if a permit has not been received by

the show promoter prior to the opening of the show, the requirements contained in this subdivision with respect to obtaining and displaying such a permit shall be deemed to have been complied with, unless and until the show promoter receives a notice from the commissioner of taxation and finance, sent by registered or certified mail, denying the application for a permit based on the existence of an order previously issued under paragraph five of this subdivision and in effect as of the date of issuance of such notice denying the application. An applicant shall have a right to a hearing in the division of tax appeals to contest such a notice of denial. If a permit is received after a show has commenced but before it has been terminated, the show promoter must commence to display such permit as provided for in this paragraph.

(3) Any show promoter who is a "person required to collect any tax imposed by this article" as defined in subdivision one of section eleven hundred thirty-one, shall comply with all of the provisions of this article relating to such persons as well as with all of the provisions of this article relating to show promoters.

(4) A show promoter shall not permit any person to display for sale or to sell tangible personal property or services subject to tax at a show unless such person is registered under subdivision (a) of this section and displays his certificate of authority in accordance with the provisions of such subdivision.

(5) Any show promoter who fails to file a notice of a show, operates a show without a permit, fails to file a report of a show, files a report which is wilfully false, or fails to comply with any provision contained in this article or any regulation promulgated by the commissioner of taxation and finance pertaining to shows shall, after an opportunity for a hearing has been afforded, be subject to the revocation of all existing permits issued, pursuant to this section, to operate a show. The commissioner of taxation and finance may, after an opportunity for a hearing has been afforded, also issue an order denying such show promoter a permit to operate a show for a period of not more than six months from the date of such order. Such penalties shall be in addition to any other penalties imposed under this chapter.

(c) (1) Every entertainment promoter of an entertainment event shall, at least twenty days prior to the occurrence of such event, file with the commissioner a notice and application for an entertainment promoter

certificate, stating the location and date of such event, in a form prescribed by the commissioner. The commissioner shall, within ten days after the receipt of any such notice, issue to the entertainment promoter, without charge, an entertainment promoter certificate. No such promoter shall authorize an entertainment vendor to make sales at such an event if such promoter has not obtained such certificate. Such certificate shall be prominently displayed at the main entrance to the event. However, if a notice required under this paragraph has been properly filed and if a certificate has not been received by the entertainment promoter prior to the commencement of the entertainment event, the requirements contained in this subdivision with respect to obtaining and displaying such a certificate shall be deemed to have been complied with, unless and until the entertainment promoter receives from the commissioner a notice, which shall be sent by registered or certified mail, denying the application for a certificate based on the existence of any order previously issued pursuant to this subdivision and in effect as of the date of issuance of such notice denying the application. An applicant shall have a right to a hearing in the division of tax appeals to contest such notice of denial. If a certificate is received after an entertainment event has commenced but before it has ended, the entertainment promoter must commence to display such certificate as provided for in this paragraph.

(2) An entertainment promoter shall not authorize any person to make taxable sales of tangible personal property at the entertainment event with respect to which he is an entertainment promoter unless such person is registered under subdivision (a) of this section and displays a certificate of authority in accordance with the provisions of such subdivision.

(3) An entertainment promoter who is a "person required to collect any tax imposed by this article" as defined in subdivision one of section eleven hundred thirty-one, shall comply with all of the provisions of this article relating to such persons as well as with all of the provisions of this article relating to entertainment promoters.

(4) Any entertainment promoter who fails to comply with any provision contained in this article or any regulation prescribed by the commissioner pertaining to an entertainment promoter's requirements with respect to entertainment events, may, after an opportunity for a hearing

has been afforded, be subject to the revocation of all existing entertainment promoter certificates issued pursuant to this subdivision. The commissioner may also, after an opportunity for a hearing has been afforded, issue an order denying such entertainment promoter an entertainment promoter certificate relating to any entertainment event for a period of not more than six months from the date of such order.

§ 1135. Records to be kept. (a) (1) Every person required to collect tax shall keep records of every sale or amusement charge or occupancy and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner of taxation and finance may by regulation require. Such records shall include a true copy of each sales slip, invoice, receipt, statement or memorandum upon which subdivision (a) of section eleven hundred thirty-two requires that the tax be stated separately.

(2) In addition to the records required to be kept by paragraph one of this subdivision, retail food stores and other participants approved for participation in the federal food stamp program under or pursuant to the federal food stamp act of nineteen hundred seventy-seven (7 U.S.C. § 2011 et seq.), as amended, whose receipts may be subject to exemption afforded by subdivision (k) of section eleven hundred fifteen, shall keep (A) true and complete copies of applications, updates of applications, redemption certificates, returns and reports furnished to or by the United States government or this state or their agencies in order to participate in the food stamp program or to redeem coupons issued under or pursuant to such federal act, and (B) records of receipts indicating whether payment is by coupons issued under or pursuant to such act.

(b) Every show promoter shall keep a record of the date and place of each show and the name, address and certificate of authority number of every person whom he permits to display for sale or to sell tangible personal property or services subject to tax at such show.

(c) Every entertainment promoter shall keep a record of the date and place of each entertainment event and the name, address and certificate of authority number of every person authorized by such promoter to make taxable sales of tangible personal property at such event.

(d) Every person selling or holding large volumes of petroleum products shall keep records for such periods and in the manner prescribed by the commissioner pursuant to rules and regulations. Such records shall show (1) the number of gallons of petroleum products purchased, the price paid therefor, the amount of tax paid pursuant to the provisions of section eleven hundred two of this article and (2) the number of gallons sold, and the price paid by the purchaser to whom such person sells the petroleum products, and the amount of tax included in such price pursuant to the provisions of section eleven hundred two of this article and the amount of tax collected pursuant to the provisions of subdivision (a) of section eleven hundred five of this article applicable to such sale together with such additional information as the commissioner shall require. The amount of tax shall be calculated in the manner set forth in section eleven hundred eleven of this article.

(e) Every person selling or possessing large quantities of cigarettes shall keep records for such periods and in the manner prescribed by the commissioner pursuant to rules and regulations. Such records shall show (1) the number of cigarettes purchased, the price paid therefor, the person from whom such cigarettes were purchased, and the amount of tax paid pursuant to the provisions of section eleven hundred three of this article and (2) the number of cigarettes sold, the person to whom such cigarettes are sold (other than a retail purchaser) and the price paid by the purchaser to whom such person sells the cigarettes, and the amount of tax included in such price pursuant to the provisions of section eleven hundred three of this article or the amount of tax collected pursuant to the provisions of subdivision (a) of section eleven hundred five of this article applicable to such sale, together with such additional information as the commissioner shall require.

(f) Every materialman described in paragraph two of subdivision (a) of section eleven hundred thirty-two of this part shall, in addition to the records required to be kept by paragraph one of subdivision (a) of this section, keep the following records with respect to each sale of building materials or services described in such paragraph two of subdivision (a) of section eleven hundred thirty-two of this part to a contractor, subcontractor or repairman: (1) the date of such sale; (2) proof that the sale meets the qualifications described in such paragraph two; (3) the amount of credit, if any, extended by such materialman to

such contractor, subcontractor or repairman for each such sale; (4) the terms for payment of the purchase price or repayment of any such credit; and (5) the date or dates on which such purchase price is paid or such credit is repaid, in part or whole, and the amount of each such payment or repayment. Notwithstanding the provisions of subdivision (g) of this section, the records referred to in this subdivision shall be preserved by such materialman for a period of three years from the date the tax on each such sale is paid over to the commissioner in full; provided, however, that the commissioner may consent to their destruction within that period or may require that they be kept longer.

(g) Such records shall be available for inspection and examination at any time upon demand by the tax commission or its duly authorized agent or employee and shall be preserved for a period of three years, except that the tax commission may consent to their destruction within that period or may require that they be kept longer. Such records may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduced the original record.

(h) Notwithstanding the provisions of section three hundred five and three hundred nine of the state technology law or any other law, the commissioner may require any person who has elected to maintain in an electronic format any portion of the records required to be maintained by that person under this article, to make the electronic records available and accessible to the commissioner, notwithstanding that the records are also maintained in a hard copy format.

§ 1136. Returns. (a)(1) Every person required to register with the commissioner as provided in section eleven hundred thirty-four of this part whose taxable receipts, amusement charges and rents total less than three hundred thousand dollars, or in the case of any such person who is a distributor whose sales of petroleum products total less than one hundred thousand gallons, in every quarter of the preceding four quarters, shall only file a return quarterly with the commissioner. Provided, however, that if the commissioner in the exercise of his or her discretion deems it necessary to protect the revenues to be obtained under this article, he or she may give notice requiring such person, in

addition to filing a quarterly return, to file either short-form or long-form part quarterly returns, as specified in such notice.

(2) Every person required to register with the commissioner as provided in section eleven hundred thirty-four of this part whose taxable receipts, amusement charges and rents total three hundred thousand dollars or more, or in the case of any such person who is a distributor whose sales of petroleum products total one hundred thousand gallons or more, in any quarter of the preceding four quarters, shall, in addition to filing a quarterly return described in paragraph one of this subdivision, and except as otherwise provided in section eleven hundred two or eleven hundred three of this article, file either a long-form or short-form part-quarterly return monthly with the commissioner.

(3) However, a person required to register with the commissioner as provided in section eleven hundred thirty-four of this part only because such person is purchasing or selling tangible personal property for resale, and who is not required to collect any tax or pay any tax directly to the commissioner under this article, shall file an information return annually in such form as the commissioner may prescribe. Likewise, a person, who is required to register and who is selling petroleum products who is not a distributor of motor fuel, shall file an information return quarterly or, if the commissioner deems necessary, monthly, in such form as the commissioner shall prescribe.

(4) The return of a vendor of tangible personal property or services shall show such vendor's receipts from sales and the number of gallons of any motor fuel or diesel motor fuel sold and also the aggregate value of tangible personal property and services and number of gallons of such fuels sold by the vendor, the use of which is subject to tax under this article, and the amount of tax payable thereon pursuant to the provisions of section eleven hundred thirty-seven of this part. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon. The return of a marketplace seller shall exclude the receipts from a sale of tangible personal property facilitated by a marketplace provider if, in regard to such sale: (A) the marketplace seller has timely received in good faith a properly completed

certificate of collection from the marketplace provider or the marketplace provider has included a provision approved by the commissioner in the publicly-available agreement between the marketplace provider and the marketplace seller as described in subdivision one of section eleven hundred thirty-two of this part, and (B) the information provided by the marketplace seller to the marketplace provider about such tangible personal property is accurate. The return of an operator shall exclude the rent from occupancy of a short term rental unit facilitated by a booking service if, in regard to such sale: (A) the short term rental operator has timely received in good faith a properly completed certificate of collection from the booking service or the booking service has included a provision approved by the commissioner in the publicly-available agreement between the booking service and the short term rental operator as described in subdivision (m) of section eleven hundred thirty-two of this part, and (B) the information provided by the short term rental operator to the booking service about such rent and such occupancy is accurate.

(5) The returns of any seller of petroleum products shall show the number of gallons of petroleum products sold, together with such additional information as the commissioner shall require in order to certify the amount of taxes, penalties and interest payable to local taxing jurisdictions imposed on the sale or use of petroleum products pursuant to the provisions of section twelve hundred sixty-one of this chapter.

(6) The returns of any seller of cigarettes shall show the amount of prepaid tax assumed or paid thereon and passed through, together with such additional information as the commissioner shall require.

(7) Taxable receipts as used in this section shall include taxable receipts from the sale of petroleum products and cigarettes and any receipts from the sale of motor fuel or diesel motor fuel or cigarettes in this state whether or not such receipts are subject to the taxes imposed by section eleven hundred two, eleven hundred three, eleven hundred five or eleven hundred ten of this article and regardless of whether the provisions of section eleven hundred twenty or eleven hundred twenty-one of this article are applicable to the taxes imposed in respect of such receipts or numbers of gallons of motor fuel or diesel motor fuel sold.

(8) For purposes of this article the term "long-form, part-quarterly return" shall mean a return in a form determined by the commissioner providing for the calculation of the actual sales and compensating use taxes for the preceding month in the manner set forth in subdivisions (a) and (b) of section eleven hundred thirty-seven of this part. A person filing a long-form, part-quarterly return for each of the months contained in a quarter shall also be required to file a quarterly return for such quarter.

(9) For purposes of this article the term "short-form, part-quarterly return" shall mean a return which shall be available for use in filing as a return for the first two months of any quarter and only by a person required to file a return monthly who has had at least four successive quarterly tax periods immediately preceding the month for which the return is to be filed and who elects such use, and is in a form determined by the commissioner and providing for the calculation of one-third of the total state and local sales and compensating use taxes paid by the person to the commissioner in the comparable quarter of the immediately preceding year under this article and as taxes imposed pursuant to the authority of article twenty-nine with respect to all receipts, amusement charges and rents.

(b) The returns and information returns required by this section to be filed quarterly shall be filed for quarterly periods ending on the last day of February, May, August and November of each year, and each return and each information return shall be filed within twenty days after the end of the quarterly period covered thereby. The returns required by this section to be filed monthly shall be filed for monthly periods ending on the last day of each month and each return shall be filed within twenty days after the end of each prior month. The information returns required to be filed annually shall be filed for twelve month periods ending on the last day of May of each year, and each such information return shall be filed within twenty days after the end of the twelve month period covered thereby.

(c) The tax commission may permit or require returns to be made covering other periods and upon such dates as it may specify. If the tax commission deems it necessary in order to insure the payment of the taxes imposed by this article, it may require returns to be made for shorter periods than those prescribed pursuant to the foregoing

subdivisions of this section, and upon such dates as it may specify.

(d) The form of returns shall be prescribed by the tax commission and shall contain such information as it may deem necessary for the proper administration of this article. The commission may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

(d-1)(1) Notwithstanding subdivision (d) of this section, a return may be amended where such amendment would not result in the reduction or elimination of a past-due tax liability, as such term is defined in section one hundred seventy-one-v of this chapter. Provided, however, that a person required to collect tax, as defined in section eleven hundred thirty-one of this part, may amend a return within one hundred eighty days of the date such return was due if the past-due liability was self-assessed and reported by such person.

(2) Where there is no such past-due tax liability, an amended return that would result in the reduction or elimination of tax due shall be deemed a claim for credit or refund and must be filed within the time required for filing a claim for credit or refund under section eleven hundred thirty-nine of this part and otherwise meet the requirements of such section.

(3) Where the commissioner has determined the amount of tax due pursuant to paragraph one of subdivision (a) of section eleven hundred thirty-eight of this part, an original return may be filed within one hundred eighty days after mailing of notice of such determination. Provided, however, that nothing in this paragraph shall affect any penalty or interest that may have accrued for such tax period on account of failure to timely file the original return.

(4) An assessment of tax, penalty and interest, including recovery of a previously paid refund, attributable to a change or correction on a return, may be made at any time within three years after such return is filed.

(e) The tax commission may by regulation require lessors as defined in paragraph (8) of subdivision (d) of section eleven hundred one to file information returns showing all leases, subleases and licenses to use granted to persons who make amusement charges, and may prescribe the form of such returns, the time when they are to be filed and the information to be contained therein.

(f) Every show promoter shall file a report monthly, within twenty days after the end of the prior month, for all shows with respect to which he was a show promoter in such prior month, listing the date and place of each show and the name, address and certificate of authority number, by show, of every person whom he permitted to display for sale or to sell tangible personal property or services subject to tax at such show. Every person shall furnish the show promoter of any show at which he displays for sale or sells tangible personal property or services subject to tax, with a statement of his name, address and certificate of authority number for the show promoter's use in filing the report required herein.

(g) Every entertainment promoter shall file a report monthly, within twenty days after the end of the prior month, for all entertainment events with respect to which he was an entertainment promoter in such prior month, listing the date and place of each such event, and the name, address and certificate of authority number, by event, of every person who made taxable sales of tangible personal property at such event. Every entertainment vendor shall furnish the entertainment promoter of any entertainment event at which he makes taxable sales of tangible personal property, with a statement containing his name, address and certificate of authority number, for the entertainment promoter's use in filing the report required herein.

(h) The commissioner may, by regulation, require any person registered or required to be registered with the commissioner under section eleven hundred thirty-four of this article to file a report regarding sales in this state of tangible personal property or services by such person to itinerant vendors where such sales are sales for resale. Any such report, if required to be filed by the commissioner, shall contain the name and certificate of authority number of every itinerant vendor who purchases tangible personal property or services for resale from such person, the sales for resale made to each such vendor and the amounts paid, charged or due thereon, together with such other information as the commissioner may require. The commissioner may prescribe the form of such report and shall indicate the time when it is to be filed and the period to be covered, provided that such reports may not be required to be filed more frequently than on a quarterly basis. For purposes of this subdivision, the term "itinerant vendor" shall include a person with no

permanent and fixed place of business in this state from which it makes sales or renders services subject to tax, such as street peddlers, show vendors or any similar vendors who transport a supply of tangible personal property from place to place, whether upon trucks, wagons or otherwise, exposing such property for sale, soliciting and negotiating sales, and immediately delivering the property, but shall not include a person who makes sales or renders services by sample, brochure or catalogue for future delivery.

(i) (1) The following persons must file, in addition to any other return required by this chapter, annual information returns with the commissioner providing the information specified below about their transactions with vendors, hotel operators, and recipients of amusement charges:

(A) Every insurer licensed to issue motor vehicle physical damage or motor vehicle property damage liability insurance for motor vehicles registered in this state if, during the period covered by the return, it has paid consideration or an amount under an insurance contract for the servicing or repair of a motor vehicle on behalf of an insured. For each person to whom the insurer has paid the consideration or amount described in the preceding sentence, the return must report the total amount paid for that period, along with the other information required by paragraph two of this subdivision.

(B) Every franchisor, as defined by section six hundred eighty-one of the general business law, that has at least one franchisee, as defined by subdivision four of section six hundred eighty-one of the general business law, that is required to be registered under section eleven hundred thirty-four of this part. For each franchisee, the return must include the gross sales of the franchisee in this state reported by the franchisee to the franchisor, the total amount of sales by the franchisor to the franchisee, and any income reported to the franchisor by each franchisee, along with the information required by paragraph two of this subdivision.

(C) Every wholesaler, as defined by section three of the alcoholic beverage control law, if it has made a sale of an alcoholic beverage, as defined by section four hundred twenty of this chapter, without collecting sales or use tax during the period covered by the return, except (i) a sale to a person that has furnished an exempt organization

certificate to the wholesaler for that sale; or (ii) a sale to another wholesaler whose license under the alcoholic beverage control law does not allow it to make retail sales of the alcoholic beverage. For each vendor, operator, or recipient to whom the wholesaler has made a sale without collecting sales or compensating use tax, the return must include the total value of those sales made during the period covered by the return (excepting the sales described in clauses (i) and (ii) of this subparagraph) and the vendor's, operator's or recipient's state liquor authority license number, along with the information required by paragraph two of this subdivision.

(D) Notwithstanding the provisions of subparagraph (C) of this paragraph, a person operating pursuant to any of the following licenses shall not be subject to any of the requirements of this subdivision: (i) a farm winery license, as provided in section seventy-six-a of the alcoholic beverage control law; (ii) a winery license, as provided in section seventy-six of the alcoholic beverage control law, where the number of gallons of wine, cider and mead produced annually by such person does not exceed the annual limits on the number of finished gallons of wine, cider and mead permitted to be produced by a farm winery under subdivision nine of section seventy-six-a of the alcoholic beverage control law; (iii) a farm distillery license, as provided in subdivision two-c of section sixty-one of the alcoholic beverage control law; (iv) a distiller's license, as provided in section sixty-one of the alcoholic beverage control law, where the number of gallons of liquor produced annually by such person does not exceed the annual limits on the number of gallons of liquor permitted to be produced by a farm distillery under paragraph (f) of subdivision two-c of section sixty-one of the alcoholic beverage control law; (v) a farm cidery license, as provided in section fifty-eight-c of the alcoholic beverage control law; (vi) a cider producers' license, as provided in section fifty-eight of the alcoholic beverage control law, where the number of gallons of cider produced annually by such person does not exceed the annual limits on the number of gallons of cider permitted to be produced by a farm cidery under subdivision ten of section fifty-eight-c of the alcoholic beverage control law; (vii) a farm brewery license, as provided in section fifty-one-a of the alcoholic beverage control law; (viii) a brewer's license, as provided in section fifty-one of the alcoholic beverage

control law, where the number of finished barrels of beer, cider and braggot produced annually by such person does not exceed the annual number of finished barrels of beer, cider and braggot permitted to be produced by a farm brewery under subdivision ten of section fifty-one-a of the alcoholic beverage control law; (ix) a farm meadery license, as provided in section thirty-one of the alcoholic beverage control law; or (x) a mead producers' license, as provided in section thirty of the alcoholic beverage control law, where the number of gallons of mead and braggot produced annually by such person does not exceed the annual number of finished barrels of mead and braggot permitted to be produced by a farm meadery under subdivision ten of section thirty-one of the alcoholic beverage control law. Nothing in this subparagraph shall exempt a person operating pursuant to multiple licenses under the alcoholic beverage control law from the requirements of subparagraph (C) of this paragraph if such person produces an amount of any alcoholic beverage in excess of the amounts permitted to be produced annually by a person who holds only a farm winery, farm cidery, farm distillery, farm brewery or farm meadery license for such beverage, nor shall this section exempt any person holding a wholesalers' license under the alcoholic beverage control law from the requirements of subparagraph (C) of this paragraph.

(2) The returns required by paragraph one of this subdivision must also include, for each vendor, operator, or recipient about whom information is required to be reported under such paragraph, the name and address, and the certificate of authority or federal identification number, and any other information required by the commissioner. The commissioner may, in the commissioner's discretion, require the reporting of less than all the information otherwise required to be reported by this paragraph and paragraph one of this subdivision.

(3) The returns required by paragraph one of this subdivision must be filed annually on or before March twentieth and must cover the four sales tax quarterly periods immediately preceding such date. Notwithstanding section three hundred five of the state technology law or any other law to the contrary, the returns must be filed electronically in the manner prescribed by the commissioner.

(4) Any person required to file a return under paragraph one of this subdivision must, on or before March twentieth, give to each vendor,

operator, or recipient about whom information is required to be reported in the return the information pertaining to that person. The commissioner may prescribe a form to be used to provide the information required to be given by this paragraph.

(5) Nothing in this subdivision is to be construed to limit the persons from whom the commissioner can secure information or the information the commissioner can require from those persons pursuant to the commissioner's authority under section eleven hundred forty-three of this part or any other provision of law.

§ 1137. Payment of tax. (a) Every person required to file a return under the preceding section whose total taxable receipts (as "taxable receipts" are described in subdivision (a) of such section), amusement charges and rents are subject to the tax imposed pursuant to subdivisions (a), (c), (d), (e) and (f) of section eleven hundred five of this article shall, at the time of filing such return, pay to the commissioner the total of the following:

(i) Four percent of the total of all receipts, amusement charges and rents subject to tax under this article, and if any of such receipts, amusement charges and rents are subject to local tax imposed pursuant to article twenty-nine of this chapter, an additional percentage of the total thereof equal to the percentage rate of such local tax;

(ii) All taxes imposed by section eleven hundred ten or pursuant to article twenty-nine of this chapter upon such person's use of property or services;

(iii) All moneys collected by such person, purportedly as tax imposed by this article or pursuant to article twenty-nine of this chapter, with respect to any receipt, gallon of motor fuel or diesel motor fuel sold, amusement charge or rent not subject to tax, and all moneys collected with respect to any receipt, gallon of such fuel, amusement charge or rent subject to tax, purportedly in accordance with a schedule prescribed by the commissioner but actually in excess of the amount stated in such schedule as the amount to be collected; and

(iv) The correct number of cents per gallon of motor fuel and diesel motor fuel sold subject to tax under this article, and, if any of such gallons sold are subject to local tax imposed pursuant to article

twenty-nine of this chapter, an additional number of cents per gallon sold subject to such local taxes equal to the rates of such taxes.

(b) Every person required to file a return under the preceding section and not subject to the provisions of subdivision (a) of this section shall, at the time of filing such return, pay to the commissioner the taxes imposed by this article and pursuant to article twenty-nine of this chapter as well as all other moneys collected by such person acting or purporting to act under the provisions of this article or of any local law, ordinance or resolution adopted pursuant to such article twenty-nine; provided, however, that if the commissioner shall have fixed an effective rate of tax applicable to any or all of his or her receipts, amusement charges and rents as provided in subdivision (d) of this section, any such person may elect, with reference to such receipts, amusement charges and rents and subject to approval by the commissioner and to such regulations as the commissioner may promulgate, to pay to the commissioner at the time of filing his or her return the total of the following:

(i) The percentage of such receipts, amusement charges and rents fixed by the commissioner as the effective rate of tax applicable thereto;

(ii) All taxes imposed by section eleven hundred ten or pursuant to article twenty-nine of this chapter upon such person's use of property or services;

(iii) All moneys collected by such person, purportedly as tax imposed by this article or pursuant to article twenty-nine of this chapter, with respect to any receipt, gallon of motor fuel or diesel motor fuel sold, amusement charge or rent not subject to tax, and all moneys collected with respect to any receipt, gallon of such fuel, amusement charge or rent subject to tax, purportedly in accordance with a schedule prescribed by the commissioner but actually in excess of the amount stated in such schedule as the amount to be collected;

(iv) The amount of the taxes imposed by this article and pursuant to article twenty-nine of this chapter with respect to all receipts, amusement charges and rents as to which no effective rate of tax fixed by the commissioner is applicable; and

(v) The correct number of cents per gallon of motor fuel and diesel motor fuel sold subject to tax under this article, and, if any of such gallons sold are subject to local tax imposed pursuant to article

twenty-nine of this chapter, an additional number of cents per gallon sold subject to such local taxes equal to the rates of such taxes.

(c) (1) The provisions of subdivisions (a) and (b) of this section shall not be applicable to: (i) a person filing a short-form, part-quarterly return as defined in paragraph (ii) of subdivision (a) of section eleven hundred thirty-six hereof who, at the time of such filing shall pay to the tax commission one-third of the total state and local sales and compensating use taxes payable by the person to the tax commission in the comparable quarter of the immediately preceding year under this article and as taxes imposed pursuant to the authority of article twenty-nine with respect to all receipts, amusement charges and rents, or (ii) a person filing a March estimated return as described in paragraph (ii) of subdivision (c) of section eleven hundred thirty-seven-A hereof who, at the time of such filing shall pay to the tax commission one-third of the sales and compensating use taxes payable by such person to the tax commission in the comparable quarter of the immediately preceding year under this article. Notwithstanding the preceding sentence, for the purposes of subparagraph (ii) of this paragraph, the sales and compensating use taxes payable in the comparable quarter of the immediately preceding year shall not include taxes imposed by section eleven hundred seven or eleven hundred eight of this article or pursuant to the authority of article twenty-nine of this chapter.

(2) The provisions of subdivisions (a) and (b) of this section, however, shall apply to a person filing a March estimated return as described in paragraph (i) of subdivision (c) of section eleven hundred thirty-seven-A hereof who, at the time of such filing shall pay to the tax commission the sales and compensating use taxes, that are estimated to be payable by such person for such month of March. Notwithstanding the preceding sentence, for the purposes of this paragraph, the sales and compensating use taxes that are estimated to be payable by such person for such month of March shall not include taxes imposed by section eleven hundred seven or eleven hundred eight of this article or pursuant to the authority of article twenty-nine of this chapter.

(d) The tax commission is hereby authorized to fix the effective rate of tax applicable to any or all of the taxable receipts, amusement charges and rents of any person required to collect tax, or of any group

or classification of such persons. Any effective rate so fixed shall be fixed at such a percentage rate as to require, so far as practicable, payment of an amount equal to the total taxes imposed by this article and pursuant to article twenty-nine.

(e) (1) The amount so payable to the tax commission for the period for which a return is required to be filed shall be due and payable to the tax commission on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of receipts, amusement charges or rents or the value of property or services sold or purchased or the taxes due thereon.

(2) Where the tax commission, in its discretion, deems it necessary to protect the revenues to be obtained under this article, it may require any person required to collect any tax imposed by this article to file with it a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility or other security acceptable to the tax commission, in such amount as the tax commission may fix, to secure the payment or payment over of any tax, penalties or interest due or which may become due from such person under this article. In the event that the tax commission determines that such person is to file such bond or other security, it shall give notice to him to that effect specifying the amount of the bond or other security required. Such person shall file such bond or other security within thirty days after the giving of such notice unless within five days after the giving of such notice he shall request, in writing, a hearing before the tax commission at which the necessity, propriety and amount of the bond or other security shall be determined by the tax commission. Such determination shall be final and shall be complied with within thirty days after the giving of notice thereof. If securities are deposited as security under this paragraph, such securities shall be kept in the custody of the commissioner of taxation and finance and may be sold by the tax commission if it becomes necessary so to do in order to recover any sums due from such person pursuant to this article, but no such sale shall be had until after such person shall have had opportunity to litigate the validity of any tax if he elects so to do. Upon any such sale, the surplus, if any, above the sums due under this

article shall be returned to such person.

* (3) As an additional or alternate requirement, whenever any person fails to collect, truthfully account for, pay over the tax, or file returns of the tax as required in this article, the commissioner, in his or her discretion where he or she deems necessary to protect the revenues to be obtained under this article, may give notice requiring such person to collect the taxes which become collectible after the giving of such notice, to deposit such taxes at least one time per week in a separate account in any banking institution approved by the commissioner and located in this state the deposits in which are insured by any agency of the federal government. Such notice may require either (i) that such account be held in trust for and payable to the commissioner, and that the amount of such tax shall be kept in such account until payment over to the commissioner; or (ii) that such person authorize the commissioner to debit such account. Any notice given by the commissioner under this paragraph shall remain in effect until a notice of cancellation is given by the commissioner. Any such person who fails to comply with a notice issued under this paragraph shall be required to file a bond pursuant to paragraph two of this subdivision.

* NB Effective until December 31, 2029

* (3) As an additional or alternate requirement, whenever any person fails to collect, truthfully account for, pay over the tax, or file returns of the tax as required in this article, the tax commission, in its discretion where it deems necessary to protect the revenues to be obtained under this article, may give notice requiring such person to collect the taxes which become collectible after the giving of such notice, to deposit such taxes in any banking institution approved by the tax commission and located in this state the deposits in which are insured by any agency of the federal government, in a separate account, in trust for and payable to the tax commission, and to keep the amount of such tax in such account until payment over to the tax commission. Such notice shall remain in effect until a notice of cancellation is given by the tax commission.

* NB Effective December 31, 2029

(f) (1) Except as otherwise provided in this subdivision, a person required to collect tax who files a return required to be filed under section eleven hundred thirty-six of this part for a quarterly or longer

period shall be allowed a credit against the taxes and fees required to be reported on, and paid with, such return, in an amount as determined in paragraph two of this subdivision, but only where such person files the return on or before the filing due date and pays or pays over with such return the total amount shown on such return (determined with regard to this subdivision); provided, however, that no credit pursuant to this subdivision shall be allowed for any person who files or is required to file a return pursuant to paragraph two of subdivision (a) of section eleven hundred thirty-six of this part or any person who pays or is required to pay tax pursuant to section ten of this chapter.

(2) The amount of the credit authorized by paragraph one of this subdivision shall be five percent of the amount of taxes and fees (but not including any penalty or interest thereon) required to be reported on, and paid or paid over with, the return but only if the return is filed on or before the filing due date, but not more than two hundred dollars, for each quarterly or longer period, except that, with respect to returns required to be filed for quarterly or longer periods ending on or before the last day of February, two thousand seven, the amount of the credit shall be not more than one hundred seventy-five dollars for each such quarterly or longer period.

(3) Notwithstanding any other provision of law: The credit afforded by this subdivision shall be taken only on the return for the quarterly or longer period to which the credit applies. No refund, carryforward or carryback of any credit, or any interest thereon, and no application for credit or refund of any tax, penalty or interest shall be allowed or paid under this subdivision. No claim for credit may be filed or allowed under this subdivision other than with the original return for such period and any later claim, whether sought to be taken on an amended return or otherwise, shall be void and any allowance erroneous. The commissioner may, on the commissioner's own motion, correct any erroneous disallowance of the credit provided by this subdivision.

(4) Notwithstanding any other provision of law: The credit authorized by this subdivision shall be computed with reference to state and local taxes and fees described in paragraph two of this subdivision, but shall be charged and allowed only against revenues from taxes imposed by sections eleven hundred five and eleven hundred ten of this article. The commissioner shall account for the aggregate amounts of such credits

monthly in accordance with the schedule for certifications to the state comptroller in section twelve hundred sixty-one of this chapter. Such aggregate monthly amounts of credits shall be netted against revenues from the taxes under such sections eleven hundred five and eleven hundred ten, to ensure that revenues from the taxes and fees imposed by other sections of law or by counties, cities and school districts pursuant to the authority of article twenty-nine of this chapter are not reduced and are deposited as provided with respect to the taxes and fees imposed by such other sections or as provided in such article twenty-nine of this chapter with respect to taxes of counties, cities and school districts. Any overpayment or underpayment of revenues of a county, city or school district or of revenues from another tax or fee, on account of the allowance of credits under this subdivision, shall be adjusted in the manner described in subdivision (c) of such section twelve hundred sixty-one of this chapter. The credit authorized by this subdivision shall not be incorporated into article twenty-nine of this chapter or into local laws, ordinances or resolutions enacted pursuant to the authority of such article twenty-nine of this chapter.

(5) (i) Where a person takes a credit pursuant to this subdivision in an amount greater than allowed or under circumstances where the credit is not authorized, or (ii) where a person takes a credit pursuant to this subdivision at the time of filing a return for a quarterly or longer period and such person later becomes subject to a penalty imposed under subparagraph (vi) of paragraph one of subdivision (a) or under paragraph two of subdivision (a) of section eleven hundred forty-five of this part or is later found guilty of a crime or offense under section eighteen hundred three, eighteen hundred four, eighteen hundred five, eighteen hundred six, or eighteen hundred seventeen of this chapter, relating to the period for which the return was filed, the amount of such credit taken in such greater amount, under such circumstances or for such period shall be disallowed and the person shall be required to pay, as tax, an amount equal to the credit so taken, at such time and in such manner as prescribed by the commissioner; provided, however, that such amount shall be paid and disposed of in the same manner as other revenues from this article, and may be determined, assessed, collected and enforced in the same manner as the tax imposed by this article.

§ 1137-A. Returns of estimated tax and payments. (a) Notwithstanding any other provision of this article, every person whose taxable receipts, amusement charges and rents totaled three hundred thousand dollars or more in the quarterly period ending November thirtieth, nineteen hundred seventy-five, shall file, with or as part of the quarterly return and payment due March twentieth, nineteen hundred seventy-six, a return setting forth the total sales and compensating use taxes estimated to be payable by such person for the month of March, nineteen hundred seventy-six calculated for such month in the manner set forth in subdivisions (a) and (b) of section eleven hundred thirty-seven and pay to the tax commission the tax so calculated. Any adjustment necessary to properly report and pay the tax for March, nineteen hundred seventy-six shall be reported on and paid with the monthly return due April twentieth, nineteen hundred seventy-six. The penalty provided for in subdivision (a) of section eleven hundred forty-five shall apply for purposes of the return and payment of estimated tax required to be filed and paid under this subdivision. Provided, however, no penalty or interest shall be payable with respect to such return and payment of estimated tax if such return is timely filed, accompanied by a payment of not less than ninety percent of the tax as finally determined to be due and payable for March, nineteen hundred seventy-six. Provided, further, that interest at the rate authorized under subdivision nine of section eleven hundred forty-two, shall be payable upon the amount of any underpayment of the tax due with such return, but not beyond April twentieth, nineteen hundred seventy-six.

(b) For the period commencing March first, nineteen hundred seventy-seven and ending February twenty-eighth, nineteen hundred eighty-three, every person required to file a monthly return pursuant to subdivision (a) of section eleven hundred thirty-six, shall file, on or before each twentieth day of March, with or as part of the monthly return and payment otherwise due in such month, either: (i) a long-form, part-quarterly return setting forth the total sales and compensating use taxes estimated to be payable by such person for such month of March calculated for such month in the manner set forth in subdivisions (a) and (b) of section eleven hundred thirty-seven; or, (ii) in the event such person is otherwise eligible and so elects, a

short-form, part-quarterly return, and in either case, pay to the tax commission the tax calculated thereunder. Any adjustment necessary to properly report and pay the tax for March shall be reported on and paid with the monthly return due in April.

(c) For the period commencing March first, nineteen hundred eighty-three and ending February twenty-eight, nineteen hundred ninety-one, every person required to file a monthly return pursuant to subdivision (a) of section eleven hundred thirty-six of this article, shall file, on or before each twentieth day of March, with or as part of the monthly return and payment otherwise due in such month, a March estimated return setting forth, either: (i) the sales and compensating use taxes estimated to be payable by such person for such month of March calculated for such month in the manner set forth in paragraph two of subdivision (c) of section eleven hundred thirty-seven; or, (ii) in the event such person has had at least four successive quarterly tax periods immediately preceding the March for which the return is to be filed and so elects, one-third of the sales and compensating use taxes payable by such person to the commissioner for the comparable quarter of the immediately preceding year calculated for such comparable quarter in the manner set forth in paragraph one of subdivision (c) of section eleven hundred thirty-seven. In either case, such person shall pay to the commissioner the tax so calculated. Any adjustment necessary to properly report and pay the tax for March shall be reported on and paid with the monthly return due in April.

(d) Except as otherwise provided in this article and to the extent not inconsistent with this section, all of the provisions of this article shall apply for purposes of the estimated tax provided for in this section.

§ 1138. Determination of tax. (a) (1) If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations

and service, number of employees or other factors. In the case of retail food stores and other participants approved for participation in the federal food stamp program under or pursuant to the federal food stamp act of nineteen hundred seventy-seven (7 U.S.C. § 2011 et seq.), as amended, whose records are incomplete or inadequate to determine tax, the external indices upon which tax may be estimated and determined may also include information contained in applications, updates of applications, redemption certificates, returns and reports which such retail food stores and other participants furnish to or are furnished by the United States government or this state or their agencies in order for such retail food stores and other participants to participate in the food stamp program or to redeem coupons issued under or pursuant to such food stamp act and any other available information considered relevant. Notice of such determination shall be mailed to the person or persons liable for the collection or payment of the tax. A notice of determination shall be mailed by certified or registered mail to the person or persons liable for the collection or payment of the tax at his last known address in or out of this state. If such person or persons is deceased or under a legal disability, a notice of determination may be mailed to his last known address in or out of this state, unless the department has received notice of the existence of a fiduciary relationship with respect to the taxpayer. After ninety days from the mailing of a notice of determination, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period applied to the division of tax appeals for a hearing, or unless the commissioner of his own motion shall redetermine the same. If the notice of determination is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(2) Whenever such tax is estimated as provided for in this section, such notice shall contain a statement in bold face type conspicuously placed on such notice advising the taxpayer: that the amount of the tax was estimated; that the tax may be challenged through a hearing process; and that the petition for such challenge must be filed with the tax commission within ninety days.

(3) (A) The liability of a purchaser, transferee or assignee of business assets sold, transferred or assigned in bulk for the payment to the state of taxes determined to be due from the seller, transferor or assignor arising under subdivision (c) of section eleven hundred forty-one of this chapter shall be an assessment of the liability determined unless the purchaser, transferee or assignee, within ninety days after the giving of notice by the tax commission to such purchaser, transferee or assignee of the total amount of any tax or taxes which the state claims to be due from the seller, transferor or assignor, shall apply to the tax commission for a hearing or unless the tax commission, on its own motion, shall redetermine such liability. Where the tax commission determines that the amount of taxes claimed to be due from the seller, transferor or assignor is erroneous or excessive in whole or in part it shall, on behalf of the purchaser, transferee or assignee, determine the amount of tax or taxes properly due and if such amount is less than the amount of taxes for which the purchaser would have been liable in the absence of such determination it shall reduce such liability accordingly. The commission may, on its motion, abate, on behalf of the purchaser, transferee or assignee, any part of the taxes determined to be erroneous or excessive, whether or not such taxes had become finally and irrevocably fixed.

(B) The liability, pursuant to subdivision (a) of section eleven hundred thirty-three of this article, of any officer, director or employee of a corporation or of a dissolved corporation, member or employee of a partnership or employee of an individual proprietorship who as such officer, director, employee or member is under a duty to act for such corporation, partnership or individual proprietorship in complying with any requirement of this article for the tax imposed, collected or required to be collected, or for the tax required to be paid or paid over to the commissioner under this article, and the amount of such tax liability (whether or not a return is filed under this article, whether or not such return when filed is incorrect or insufficient, or where the tax shown to be due on the return filed under this article has not been paid or has not been paid in full) shall be determined by the commissioner in the manner provided for in paragraphs one and two of this subdivision. Such determination shall be an assessment of the tax and liability for the tax with respect to such

person unless such person, within ninety days after the giving of notice of such determination, shall apply to the division of tax appeals for a hearing. If such determination is identical to or arises out of a previously issued determination of tax of the corporation, dissolved corporation, partnership or individual proprietorship for which such person is under a duty to act, an application filed with the division of tax appeals on behalf of the corporation, dissolved corporation, partnership or individual proprietorship shall be deemed to include any and all subsequently issued personal determinations and a separate application to the division of tax appeals for a hearing shall not be required. The commissioner may, nevertheless, of their own motion, redetermine such determination of tax or liability for tax. Where the commissioner determines or redetermines that the amount of tax claimed to be due from a vendor of tangible personal property or services, a recipient of amusement charges, or an operator of a hotel or short term rental unit is erroneous or excessive in whole or in part, they shall redetermine the amount of tax properly due from any such person as a person required to collect tax with respect to such vendor, recipient, or operator, and if such amount is less than the amount of tax for which such person would have been liable in the absence of such determination or redetermination, they shall reduce such liability accordingly. Furthermore, the commissioner may, of their own motion, abate on behalf of any such person, any part of the tax determined to be erroneous or excessive whether or not such tax had become finally and irrevocably fixed with respect to such person but no claim for abatement may be filed by any such person. The provisions of this paragraph shall not be construed to limit in any manner the powers of the attorney general under subdivision (a) of section eleven hundred forty-one of this part or the powers of the commissioner to issue a warrant under subdivision (b) of such section against any person whose liability has become finally and irrevocably fixed.

(C) The liability of any person as an owner of a filling station, for the penalty imposed by subparagraph (vii) of paragraph one of subdivision (a) of section eleven hundred forty-five, and the amount of such penalty shall be determined by the tax commission. Such determination shall be an assessment of the amount of and liability for penalty with respect to such person unless such person, within ninety

days after the giving of notice of such determination, shall apply to the tax commission for a hearing. The tax commission may, nevertheless, of its own motion, redetermine such determination or liability for penalty. Furthermore, the tax commission may, of its own motion, abate any part of the penalty determined to be erroneous or excessive whether or not such penalty has become finally and irrevocably fixed with respect to such person but no claim for abatement may be filed by any such person. The provisions of this paragraph shall not be construed to limit in any manner the powers of the attorney general under subdivision (a) of section eleven hundred forty-one of this article or the powers of the tax commission to issue a warrant under subdivision (b) of such section against any person whose liability has become finally and irrevocably fixed.

(D) The liability of any person, as an owner of a place of business selling cigarettes at retail, for the penalty imposed by subparagraph (viii) of paragraph one of subdivision (a) of section eleven hundred forty-five of this article and the amount of such penalty shall be determined by the commissioner. Such determination shall be an assessment of the amount of and liability for such penalty with respect to such person, unless such person, within ninety days after the giving of notice of such determination, shall apply to the division of tax appeals for a hearing. The commissioner may, nevertheless, on the commissioner's own motion, redetermine such determination. Furthermore, the commissioner may, on the commissioner's own motion, abate any part of the penalty determined to be erroneous or excessive whether or not such penalty has become finally and irrevocably fixed with respect to such person; but no claim for abatement may be filed by any such person. The provisions of this paragraph shall not be construed to limit in any manner the powers of the attorney general under subdivision (a) of section eleven hundred forty-one of this article or the powers of the commissioner to issue a warrant under subdivision (b) of such section against any person whose liability has become finally and irrevocably fixed.

(E) In addition to any other liability a credit card issuer or fuel distributor may have, the commissioner shall determine any or all of the following liabilities: (1) any tax, interest or penalty liability of a credit card issuer or fuel distributor for any credit allowed or refund

paid under subdivision (h) of section eleven hundred thirty-nine of this part which was erroneously, illegally or unconstitutionally allowed or paid to such credit card issuer or fuel distributor, or (2) the penalty imposed by subparagraph (ix) of paragraph one of subdivision (a) of section eleven hundred forty-five of this part. In any such instance, the commissioner shall give the credit card issuer or fuel distributor notice of such determination in the manner described in paragraph one and two of this subdivision. Such determination shall be an assessment of any such liability unless such credit card issuer or fuel distributor, within ninety days after the giving of such notice and determination, shall apply to the commissioner for a hearing. The commissioner may, nevertheless, of his or her own motion, redetermine such determination or liability for penalty. Furthermore, the commissioner may, of his or her own motion, abate any part of the penalty determined to be erroneous or excessive whether or not such penalty has become finally and irrevocably fixed with respect to such issuer or fuel distributor but no claim of abatement may be filed by such issuer or fuel distributor. The provisions of this paragraph shall not be construed to limit in any manner the powers of the attorney general under subdivision (a) of section eleven hundred forty-one of this part or the powers of the commissioner to issue a warrant under subdivision (b) of such section against any such issuer or fuel distributor whose liability has become finally and irrevocably fixed.

(4) After the hearing provided for in paragraph one or three of this subdivision, the division of tax appeals shall give notice promptly by registered or certified mail of the determination of the administrative law judge to the petitioner and to the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter. Such a proceeding for judicial review shall not be instituted unless the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of taxation and finance and there shall be filed with the commissioner of taxation and finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to

solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding, or at the option of the petitioner such undertaking filed with the commissioner of taxation and finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges which may accrue against him in the prosecution of the proceeding, in which event the petitioner shall not be required to deposit such taxes, penalties and interest as a condition precedent to the commencement of the proceeding. The preceding sentence shall not apply to a proceeding brought to review a determination made under subparagraph (B) of paragraph three of this subdivision.

(b) If the tax commission believes that the collection of any tax will be jeopardized by delay it may determine the amount of such tax and assess the same, together with all interest and penalties provided by law, against any person liable therefor prior to the filing of his return and prior to the date when his return is required to be filed. The amount so determined shall become due and payable to the tax commission by the person against whom such a jeopardy assessment is made, as soon as notice thereof is given to him personally or by registered or certified mail. The provisions of subdivision (a) of this section shall apply to any such determination except to the extent that they may be inconsistent with the provisions of this subdivision. The tax commission may abate any jeopardy assessment if it finds that jeopardy does not exist. The collection of any jeopardy assessment may be stayed by filing with the tax commission a bond issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, conditioned upon payment of the amount assessed and interest thereon, or any lesser amount to which such assessment may be reduced by the tax commission or by a proceeding under article seventy-eight of the civil practice law and rules as provided in subdivision (a), such payment to be made when the assessment or any such reduction thereof shall have become final and not subject to further review. If such a bond is filed and thereafter a proceeding under article seventy-eight is commenced as provided in subdivision (a),

deposit of the taxes, penalties and interest assessed shall not be required as a condition precedent to the commencement of such proceeding. Where a jeopardy assessment is made, any property seized for the collection of the tax shall not be sold (1) until expiration of the time to apply for a hearing as provided in subdivision (a) of this section, and (2) if such application is timely filed, until the expiration of four months after the tax commission has given notice of its determination to the person against whom the assessment is made; provided, however, such property may be sold at any time if such person has failed to attend a hearing of which he has been duly notified, or if he consents to the sale, or if the tax commission determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(c) A person liable for collection or payment of tax (whether or not a determination assessing a tax pursuant to subdivision (a) of this section has been issued) shall be entitled to have a tax due assessed prior to the ninety-day period referred to in subdivision (a) of this section, by filing with the tax commission a signed statement in writing, in such form as the tax commission shall prescribe, consenting thereto.

(d) Except as otherwise provided in subdivision (a) of this section, the provisions of this section shall not be applicable to the liability of a purchaser, transferee or assignee arising under the provisions of subdivision (c) of section eleven hundred forty-one of this chapter.

§ 1139. Refunds. (a) In the manner provided in this section the tax commission shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the tax commission (i) in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission as provided in section eleven hundred thirty-seven, or (ii) in the case of a tax, penalty or interest paid by the applicant to the tax commission, within three years after the date when such amount was payable under this article, or (iii) in the case of a tax due from the seller, transferor or assignor and paid by the

applicant to the tax commission where the applicant is a purchaser, transferee or assignee liable for such tax pursuant to the provisions of subdivision (c) of section eleven hundred forty-one of this chapter, within two years after the giving of notice by the tax commission to such purchaser, transferee or assignee of the total amount of any tax or taxes which the state claims to be due from the seller, transferor or assignor. Such application shall be in such form as the tax commission shall prescribe. No refund or credit shall be made to any person of tax which he collected from a customer until he shall first establish to the satisfaction of the tax commission, under such regulations as it may prescribe, that he has repaid such tax to the customer. Notwithstanding any other provision of this article, if the time to file an application for refund or credit of any tax, penalty or interest would otherwise have expired on or before December nineteenth, nineteen hundred sixty-nine, the time for filing such application is hereby extended to and including December twentieth, nineteen hundred sixty-nine, except that it shall be further extended, as provided in subdivision (c) of section eleven hundred forty-seven, where a taxpayer has consented in writing to the extension of the period for assessment of additional tax.

(b) If an application for refund or credit is filed with the commissioner of taxation and finance as provided in subdivision (a) of this section, the commissioner of taxation and finance shall grant or deny such application in whole or in part within six months of receipt of the application in a form which is able to be processed and shall notify such applicant by mail accordingly. Such determination shall be final and irrevocable unless such applicant shall, within ninety days after the mailing of notice of such determination, petition the division of tax appeals for a hearing. After such hearing, the division of tax appeals shall mail notice of the determination of the administrative law judge to such applicant and to the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter.

(c) Claim for credit or refund of an overpayment of sales tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such

periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner made pursuant to section eleven hundred thirty-eight unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the division of tax appeals pursuant to article forty of this chapter or by the commissioner of his own motion, or in a proceeding for judicial review provided for in section two thousand sixteen of this chapter, in which event a refund or credit shall be made of the tax, interest or penalty found to have been overpaid.

(d) (1) Except in respect to an overpayment made on a return described in paragraph two of subdivision (a) of section eleven hundred thirty-six of this part or on a return described in subdivision (c) of section eleven hundred thirty-seven-A of this part, interest shall be allowed and paid upon any refund made or credit allowed pursuant to this section except as otherwise provided in paragraph two of this subdivision or subdivision (e) of this section and except that no interest shall be allowed or paid if the amount thereof would be less than one dollar. Such interest shall be at the overpayment rate set by the commissioner pursuant to section eleven hundred forty-two of this part, or if no rate is set, at the rate of six percent per annum from the date when the tax, penalty or interest refunded or credited was paid to a date preceding the date of the refund check by not more than thirty days, provided, however, that for the purposes of this subdivision any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day. In the case of a refund or credit claimed on a

return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an application for refund or credit, no interest shall be allowed or paid for any day before the date on which the return or application is filed. For purposes of this subdivision, a return or application for refund or credit shall not be treated as filed until it is filed in processible form. A return or application is in a processible form if it is filed on a permitted form, and contains the taxpayer's name, address and identifying number and the required signatures, and sufficient required information (whether on the return or application or on required attachments) to permit the mathematical verification of tax liability shown on the return or refund or credit claimed on the application.

(2) If a refund is made or a credit is allowed within three months after the last date prescribed or permitted by extension of time for filing a return on which the refund or credit was claimed or within three months after the return was filed, whichever is later, or within three months after an application for refund or credit is filed on which that refund or credit was claimed, no interest will be allowed or paid on that refund or credit.

(e) The provisions of subdivisions (a), (b) and (c) of this section shall be applicable to applications for refund or credit pursuant to section eleven hundred nineteen and subdivision (e) of section eleven hundred thirty-two, except that an application for credit may be made as provided in such section or subdivision and except that no interest shall be allowed or paid upon any refund made or credit allowed pursuant to such section or such subdivision.

(f) Where a consumer returns a motor vehicle to and receives a refund of the full purchase price, capitalized cost or a portion thereof from the manufacturer in accordance with the provisions of section one hundred ninety-eight-a or subdivision five of section three hundred ninety-six-p of the general business law, the commissioner of taxation and finance shall refund to such consumer any tax paid by the consumer on the amount of the purchase price, capitalized costs and fees and charges refunded by the manufacturer which is not in excess of the receipts and proportionate to the receipts subject to tax. All the provisions of this section shall apply to the refund authorized by this subdivision, provided, however, that a request for a refund under this

subdivision shall be timely made if such request for a refund is made within three years of the date the refund from the manufacturer is received by a consumer pursuant to subdivision (c) of section one hundred ninety-eight-a of the general business law and further provided that interest allowable under subdivision (d) of this section shall be payable from the date which is three months after the date the application for refund in processible form is received.

(g) The tax commission shall refund or credit any tax imposed, under subdivision (a) of section eleven hundred five or section eleven hundred ten, and paid on or after July first, nineteen hundred eighty-seven with respect to:

(i) tractors, trailers or semi-trailers, as such terms are defined in article one of the vehicle and traffic law, and property installed on such vehicles for their equipping, maintenance or repair provided such vehicle is used in combination where the gross vehicle weight of such combination exceeds twenty-six thousand pounds; and

(ii) services, if performed upon tractors, trailers or semi-trailers described in paragraph (i) of this subdivision or on property installed on such vehicles for their equipping, maintenance or repair.

All of the provisions of this section shall apply to the refund authorized by this subdivision, provided, however, that interest allowable under subdivision (d) of this section shall be payable in accordance with such subdivision but only from the date the tax, penalty or interest refunded or credited was paid, or was deemed to have been paid, to March thirty-first, nineteen hundred eighty-eight and from the date which is ninety days after the date the application for refund in processible form is received.

(h)(1) Notwithstanding any provision of the law to the contrary, pursuant to the provisions of this subdivision, the commissioner shall refund or credit to (i) a credit card issuer tax paid pursuant to this article in respect to motor fuel and diesel motor fuel purchased by a government entity and paid for by such government entity with a credit card issued by such credit card issuer or (ii) a fuel distributor tax paid pursuant to this article in respect to motor fuel and diesel motor fuel purchased by a government entity and paid for by such government entity with a credit card issued by a credit card issuer. Such credit

card issuer or such fuel distributor, as designated by the parties in a written designation to the commissioner, shall be the only person eligible to receive such refund or credit, provided that: (A) such taxes were actually paid to the commissioner; (B) the fuel so purchased by the government entity is for its own use or consumption such that the purchase qualifies as an exempt purchase pursuant to an exception in paragraph five of subdivision (b) of section eleven hundred sixteen of this article; (C) the credit card issuer or fuel distributor meets the requirements of paragraph two of this subdivision; and (D) the commissioner has not issued a notice pursuant to subdivision fourteen of section eleven hundred forty-two of this part indicating that the credit card issuer or fuel distributor is no longer allowed to claim a refund or credit under this subdivision for the fuel purchased by a particular government entity. Such application for credit or refund shall be submitted after the end of the quarter in which the vendor of the motor fuel or diesel motor fuel was required to report the tax liability it collected from the credit card issuer or fuel distributor pursuant to section eleven hundred thirty-six of this part, but within the applicable statute of limitations as required under this section.

(2) In order to be eligible to receive the refund or credit provided for in paragraph one of this subdivision, the credit card issuer or fuel distributor shall: (A) file with the commissioner a certificate of registration and receive a certificate of authority pursuant to section eleven hundred thirty-four of this part, if not already so registered, provided, however, the credit card issuer or fuel distributor shall provide such additional information as the commissioner may require; (B) establish it has (i) not charged or otherwise received any tax, or any amount purportedly as tax, from the government entity making the purchase; and (ii) filed a written consent signed by the chief fiscal officer of the government entity stating that no tax was charged to such government entity by the credit card issuer or fuel distributor, and that therefore the government entity has no claim for a credit or refund relating to its purchases of motor fuel or diesel motor fuel effected with the credit card issuer's credit card and that no such claim has or will be made by the government entity; (C) establish either that (i) the retail station or other vendor has been repaid the amount of tax it charged to the government entity on the government entity's purchase of

the motor fuel or diesel motor fuel, or (ii) obtained the written consent of the retail station or other vendor to the allowance of the credit or refund to the credit card issuer or fuel distributor; and (D) provide such detailed transactional and jurisdictional information to the commissioner as the commissioner may require, in the form requested by the commissioner.

(3)(A) The term "government entity" means an entity described in paragraph one, two or three of subdivision (a) of section eleven hundred sixteen of this article or any diplomatic mission or diplomatic personnel who are permitted by the United States to purchase fuel and diesel motor fuel exempt from the taxes imposed pursuant to this article and articles twelve-A and thirteen-A of this chapter.

(B) The term "credit card issuer" means a person which finances the exempt purchase of motor fuel or diesel motor fuel by a government entity by means of a credit or other access card issued to the government entity by such person.

(C) The term "fuel distributor" means any person who is a registered distributor under article twelve-A of this chapter and who is registered as a person required to collect tax pursuant to this article.

(4) If any requirement of paragraph two of this subdivision is not met, or if the credit card issuer and, where applicable, the fuel distributor, receive a notice pursuant to subdivision fourteen of section eleven hundred forty-two of this article, then an amount equal to the tax imposed by this article shall be collected from the government entity, notwithstanding such entity's exempt status, and such government entity shall be responsible for seeking any credit or refund which it may be allowed under this article.

(5) The provisions of subdivisions (a), (b) and (c) of this section shall also apply to an application for refund or credit pursuant to this subdivision, except to the extent that such subdivisions are inconsistent with this subdivision, and except that no interest shall be allowed or paid upon any refund made or credit allowed pursuant to this subdivision. Any document required pursuant to this subdivision shall be in such form and contain such information as the commissioner shall prescribe.

(6) A credit card issuer or fuel distributor designated pursuant to this subdivision to receive the refund or credit and its officers,

directors, employees, managers and members under a duty to act for such credit card issuer or fuel distributor in complying with any requirement of this article and, where such credit card issuer or fuel distributor is a partnership or limited liability company, any member of such partnership or company shall be deemed to be persons required to collect tax and shall be personally liable in accordance with section eleven hundred thirty-three of this article with respect to the liabilities described in subparagraph (E) of paragraph three of subdivision (a) of section eleven hundred thirty-eight of this part. Nothing in this subdivision shall be construed to require a credit card issuer to file a return pursuant to section eleven hundred thirty-six of this part unless otherwise required to do so by another provision of this article or unless the commissioner, in his or her discretion, determines it is necessary for the proper enforcement of this article for credit card issuers or distinct classes of such issuers to file such returns and gives notice of such determination to such issuers.

(7) Nothing in this subdivision shall be construed to exempt (A) the purchase of motor fuel or diesel motor fuel by a government entity where it is not the ultimate user or consumer of such fuel, or (B) any sale by a government entity of motor fuel or diesel motor fuel.

§ 1140. Remedies exclusive. The remedies provided by sections eleven hundred thirty-eight and eleven hundred thirty-nine shall be exclusive remedies available to any person for the review of tax liability imposed by this article; and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding under article seventy-eight of the civil practice law and rules.

§ 1141. Proceedings to recover tax. (a) Whenever any person required to collect tax shall fail to collect or pay over any tax, penalty or interest imposed by this article as therein provided, or whenever any customer shall fail to pay any such tax, penalty or interest, the attorney general shall, upon the request of the tax commission, bring or

cause to be brought an action to enforce the payment of the same on behalf of the state of New York in any court of the state of New York or of any other state or of the United States.

(b) As an additional or alternate remedy, the tax commission may issue a warrant, directed to the sheriff of any county commanding him to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his county, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the tax commission and to pay it the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed in the department of state. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the tax commission shall have the same remedies to enforce the amount due thereunder as if the state had recovered judgment therefor.

(c) Whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten days before taking

possession of the subject of said sale, transfer or assignment, or paying therefor, notify the tax commission by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee that he owes any tax pursuant to this article, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the tax commission as required by the preceding paragraph, or whenever the tax commission shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the state, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property or choses in action to the extent of the amount of the state's claim. Within ninety days of receipt of the notice of the sale, transfer, or assignment from the purchaser, transferee or assignee, the tax commission shall give notice to the purchaser, transferee or assignee and to the seller, transferrer, or assignor of the total amount of any tax or taxes which the state claims to be due from the seller, transferrer, or assignor to the state, and whenever the tax commission shall fail to give such notice to the purchaser, transferee, or assignee and the seller, transferrer, or assignor within ninety days from receipt of notice of the sale, transfer, or assignment, such failure will release the purchaser, transferee or assignee from any further obligation to withhold any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor, except that with respect to pending matters such ninety day periods shall not begin to run until ninety days after the effective date of this provision. For failure to comply with the provisions of this subdivision

the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the state of any such taxes theretofore or thereafter determined to be due to the state from the seller, transferrer or assignor, except that the liability of the purchaser, transferee or assignee shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred or assigned to such purchaser, transferee, or assignee, whichever is higher, and such liability may be assessed and enforced in the same manner as the liability for tax under this article. Upon receipt within the ninety days as aforesaid of the notice of the total amount of the state's claim from the tax commission, and demand for payment thereof, the purchaser, transferee or assignee may make payment of such claim to the state from any sums of money, property, or choses in action withheld in accord with the provisions of this paragraph, except that such payment shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred, or assigned to such purchaser, transferee, or assignee, whichever is higher, and upon making the payment, such purchaser, transferee, or assignee shall be relieved of all liability for such amounts to the seller, transferrer, or assignor, and such amounts paid to the state shall be deemed satisfaction of the tax liability of the seller, transferrer, or assignor to the extent of the amount of such payment.

Where the liability of a purchaser, transferee or assignee, for the payment to the state of any such taxes determined to be due from the seller, transferrer or assignor, has been wholly paid or satisfied or no longer exists, the tax commission shall mail to such purchaser, transferee or assignee a notice, addressed to his last known address, setting forth that such liability has been wholly paid or satisfied or no longer exists. The tax commission shall include in such notice the following additional information:

- (1) the name and last known address of the purchaser, transferee or assignee;
- (2) the amount of the lien paid, satisfied or vacated; and
- (3) a statement to the effect that consumer reporting agencies must

delete from a credit file any reference to the particular tax lien within thirty days of receipt from the purchaser, transferee or assignee of such notice. Provided, however, no order or decree in a bankruptcy proceeding shall be construed as giving rise to the requirement that the notice provided for in this paragraph be given.

§ 1142. General powers of the tax commission. In addition to the powers granted to the tax commission in this article, it is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this article and the purposes thereof;

2. To extend, for cause shown, the time of filing any return or report for a period not exceeding three months; and for cause shown, to remit penalties but not interest computed at the rate of six percent per annum;

3. To delegate its functions hereunder to a deputy commissioner of taxation and finance or any employee or employees of the department of taxation and finance;

4. To prescribe methods for determining the amount of receipts, amusement charges, dues or rents and for determining which of them are taxable and which are nontaxable;

5. To require any person required to collect tax to keep detailed records of all receipts, amusement charges, dues or rents received, charged or accrued, including those claimed to be nontaxable, and also of the nature, type, value and amount of all purchases, sales, services rendered, admissions, memberships, occupancies, names and addresses of customers, and other facts relevant in determining the amount of tax due and to furnish such information upon request to the tax commission;

6. To assess, determine, revise and readjust the taxes imposed by this article;

7. To publish and maintain, as it deems necessary, lists of specific items of tangible personal property which are found to be foods and drugs exempt from tax under paragraphs (1) and (3) of section eleven hundred fifteen. Assistance and cooperation in the formulation of such lists shall be provided by the department of health upon request by the tax commission.

8. To make such provision as it deems necessary for the joint administration of the state and local taxes imposed by this article and authorized by article twenty-nine of the tax law, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe by regulation that any of the commission's functions under said articles, and any returns, forms, statements, documents or information to be submitted to the commission under said articles, any books and records to be kept for purposes of the taxes imposed or authorized by said articles, any schedules of amounts to be collected under said articles, any registration required under said articles, and the payment of taxes under said articles shall be on a joint basis with respect to the taxes imposed by said articles.

9. To set the overpayment and underpayment rates of interest for purposes of sections eleven hundred thirty-nine and eleven hundred forty-five of this part. Such rates shall be the overpayment and underpayment rates of interest set pursuant to subsection (e) of section one thousand ninety-six of this chapter, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect. In computing the amount of any interest required to be paid under this article by the commissioner or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any interest for failure

to pay estimated tax under subparagraph (iv) of paragraph one of subdivision (a) of section eleven hundred forty-five of this part.

10. To delegate from time to time and in whole or in part, when it deems it to be in the best interests of the state, to the commissioner of finance of the city of New York and his employees and agents, and to the county executives of Nassau and Suffolk counties and their employees and agents its power to examine the books and records of any person in the city of New York or the counties of Nassau and Suffolk who is subject to the taxes imposed by or required to file returns pursuant to this article; provided, however, that (a) such delegation shall relate solely to examining books and records and not to review, assessment, appeal, or any other action taken on the basis of such examination, (b) every examination made pursuant to such delegation shall be conducted in accordance with the direction, methods, rules, practices, procedures, and regulations of the commissioner of taxation and finance, (c) no power shall be delegated to re-examine books and records for periods previously examined by the commissioner of taxation and finance, his agents or employees, and (d) such delegation shall limit the county executives of Nassau and Suffolk counties to examine only those books and records of persons within their respective counties.

11. To make such provision pursuant to rules and regulations for the joint administration, in whole or in part, of the state and local taxes imposed by this article and authorized by article twenty-nine of this chapter upon the sale of petroleum products and the taxes imposed by article twelve-A of this chapter and authorized to be imposed by such article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the commissioner's functions under said articles, and any returns, forms, statements, documents or information to be submitted to the commissioner under said articles, any books and records to be kept for purposes of the taxes imposed or authorized by said articles, any schedules of amounts to be collected under said articles, any registration required under said articles, and the payment of taxes under said articles shall be on a joint basis with respect to the taxes imposed by said articles.

12. To make such provision pursuant to rules and regulations for the joint administration, in whole or in part, of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter upon the sale or use of cigarettes and the taxes imposed by article twenty of this chapter, including the joint reporting, assessment, collection, determination and refund of such taxes, and, for that purpose, to prescribe that any of the commissioner's functions under such articles, any returns, forms, statements, documents or information to be submitted to the commissioner under such articles, any books and records required to be kept for purposes of the taxes imposed or authorized by such articles, any schedules of amounts to be collected under such articles, any registration required under such articles, and the payment of taxes by stamp, meter impression or otherwise under such articles shall be on a joint basis with respect to the taxes imposed or authorized by such articles.

13. To authorize a qualified person who is not the vendor with respect to a motor vehicle to collect any tax due under this article or pursuant to the authority of article twenty-nine of this chapter upon the sale or for the use of such motor vehicle, at the time such person performs the function of registering such vehicle or accepting an application for a certificate of title of such vehicle. A qualified person is a person (i) who is registered with the commissioner as provided in section eleven hundred thirty-four of this article (other than a person who elects to file a certificate of registration under paragraph three of subdivision (a) of section eleven hundred thirty-four of this article unless such person agrees to subject itself to the jurisdiction of this state as a condition for issuance of such certificate of registration and for authorization under this subdivision) and (ii) who the commissioner of motor vehicles has certified to the commissioner is a person authorized by the commissioner of motor vehicles to perform the function of registering a motor vehicle or accepting an application for a certificate of title of a motor vehicle, pursuant to the authority of the vehicle and traffic law. Where such a qualified person has been so authorized by the commissioner and performs such function or accepts such an application, (A) such person shall be deemed to be a person

required to collect tax with respect to the sale or use of such motor vehicle; (B) such person shall collect the tax as trustee for and on account of the state, in accordance with the provisions of subdivision (a) of section eleven hundred thirty-two of this article; (C) such person shall be personally liable for the tax imposed, collected or required to be collected under this article and pursuant to article twenty-nine of this chapter, as well as any penalty and interest in connection therewith, and for any moneys collected purportedly as tax; (D) such person shall be subject to and comply with all the other provisions of this article and article twenty-nine of this chapter and of any regulations adopted pursuant thereto, and to all the requirements and obligations thereof, and have all the benefits and entitlements, of a person required to collect tax under this article and pursuant to the authority of such article twenty-nine with respect to such sale or use and such tax required to be collected, as if the person were the vendor with respect to such motor vehicle, provided, however, that no person qualified under this article shall receive the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part; (E) such person shall keep such additional records, provide such additional information and cooperate with the commissioner, as provided by the commissioner, to ensure the proper collection and remittance of tax imposed, collected or required to be collected under this article and such article twenty-nine; and (F) notwithstanding any provision of law to the contrary, such person and any officer, director, manager, employee or agent of such person shall be deemed to be a person who in any manner has acquired knowledge of the contents of a return or report filed with the commissioner pursuant to this article and such article twenty-nine, with respect to any information such person or such officer, director, manager, employee or agent acquired in conjunction with performing such function of registering a motor vehicle or accepting such an application for a certificate of title; and any such information so acquired shall be deemed to be the contents of such a return or report, for purposes of section eleven hundred forty-six of this article. The term "such person" as used in the previous sentence shall include any officer, director, manager or employee of such person, who as such officer, director, manager or employee is under a duty to act for such person in complying with any requirement of this article or

such article twenty-nine or who is otherwise subject to complying with any such requirement of this article or article twenty-nine of this chapter and any member of a partnership or limited liability company. For purposes of this subdivision, the term "motor vehicle" shall have the same meaning that such term has for purposes of subdivision (f) of section eleven hundred thirty-two of this article. In order to effectuate the authority granted by this paragraph and to enforce and administer the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter:

(a) The commissioner may modify the requirements to file returns and to pay or pay over tax or other moneys in section ten of this chapter, sections eleven hundred thirty-six and eleven hundred thirty-seven of this article and in such article twenty-nine, with respect to returns required to be filed under this article or pursuant to article twenty-nine of this chapter and taxes and moneys required to be paid or paid over under such sections ten and eleven hundred thirty-seven and article twenty-nine, by qualified persons authorized to collect tax under this subdivision, where the commissioner provides that any class of such persons shall pay or pay over such taxes or moneys to the commissioner of motor vehicles as agent of the commissioner.

(b) Any authorization granted pursuant to the opening paragraph of this subdivision shall be evidenced by a certificate issued by the commissioner and may be for a specified term; and, if such authorization is for a specified term, it shall be subject to renewal in accordance with rules promulgated by the commissioner. A qualified person to whom the commissioner has issued such a certificate shall display the certificate prominently at the place where such person performs such function or accepts such an application.

(c) In addition to the commissioner's authority in section eleven hundred thirty-four of this article, the commissioner may revoke or suspend the authority granted to a qualified person pursuant to this subdivision if such person fails to comply with any requirement of this article or article twenty-nine of this chapter or if the commissioner of motor vehicles advises the commissioner that such person is no longer certified to perform the functions described in the opening paragraph of this subdivision.

(d) In addition to any other general or specific authority under this

article to make, adopt and amend rules, regulations, procedures and forms, the commissioner may make, adopt and amend rules, regulations, procedures and forms necessary for the proper administration of this subdivision, to ensure the integrity and qualifications of any person seeking authorization under the opening paragraph of this subdivision, and to ensure the proper collection, payment over and protection of taxes imposed and revenues to be obtained under this article and pursuant to the authority of article twenty-nine of this chapter, together with any related penalties and interest and moneys collected purportedly as tax.

(e) The commissioner of motor vehicles shall cooperate with the commissioner and provide such information and assistance as the commissioner requires, to enable the commissioner to carry out the commissioner's responsibilities under this article, article twenty-nine of this chapter and the purposes thereof; and the commissioner of motor vehicles shall require a qualified person authorized pursuant to the opening paragraph of this subdivision to file with either the commissioner of motor vehicles or the commissioner a bond issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, or other security acceptable to the commissioner, in such amounts as the commissioner may fix, to secure the payment or payment over of any tax, penalties or interest due or which may become due from such person under this article or pursuant to the authority of article twenty-nine of this chapter, as well as any moneys collected by such person purportedly as tax imposed by this article or pursuant to article twenty-nine.

(f) Nothing in this subdivision shall be construed to mean or provide that a person required to collect tax shall not be required to collect tax when such person sells a motor vehicle to a purchaser who seeks or may seek to register or submit an application for a certificate of title for such vehicle with another person authorized to collect tax pursuant to the opening paragraph of this subdivision. Where a person required to collect tax is the vendor of a motor vehicle, such person must collect any tax due from the purchaser without regard to the other provisions of this subdivision.

14. To issue a notice to a credit card issuer and, where applicable, the fuel distributor, and any government entity, as such terms are defined in subdivision (h) of section eleven hundred thirty-nine of this part, that, as of the date specified by the commissioner in such notice, the credit card issuer or fuel distributor shall no longer be eligible to apply for refunds or credit with respect to purchases of motor fuel or diesel motor fuel by such government entity, the government entity shall no longer be eligible to employ any other credit card issuer or fuel distributor pursuant to such subdivision (h) and no such claim for credit or refund will be allowed or paid in accordance with such subdivision (h), where the commissioner has determined that (a) the motor fuel or diesel motor fuel purchased through the use of the credit card issuer's credit card was not for the government entity's own use or consumption or (b) it is necessary for the proper enforcement of this article to issue such notice. The commissioner, in his or her discretion, may cancel or suspend the operation of such notice where the credit card issuer, fuel distributor, where applicable, and the government entity establish, to the commissioner's satisfaction, that appropriate steps have been undertaken to rectify the circumstances leading to the issuance of such notice. In such case, the commissioner will notify the credit card issuer or fuel distributor, where applicable, that the designated person will be eligible to apply for refunds or credits pursuant to subdivision (h) of section eleven hundred thirty-nine of this part in accordance with such terms as set forth by the commissioner. Nothing in this subdivision shall be deemed to affect the eligibility of the government entity to claim a refund or credit for tax paid on motor fuel or diesel motor fuel it purchased where such purchase qualifies for exemption pursuant to paragraph five of subdivision (b) of section eleven hundred sixteen of this article. Notwithstanding any other provision of law, if the credit card issuer, fuel distributor, where applicable, or government entity disputes any aspect of the notice issued pursuant to this subdivision:

(i) the credit card issuer, fuel distributor, where applicable, and the government entity who receive such a notice shall have the right to have the issuance of such notice reviewed by the commissioner or his or her designee by contacting the department at a telephone number or an address to be disclosed in the notice within ten days of the recipient's

receipt of the notice. The recipient may present written evidence or arguments in support of its claim, or the recipient may appear at a scheduled conference with the commissioner or such designee to present oral arguments and written and oral evidence in support of such position. The commissioner or such designee is authorized to delay the effective date of the notice to enable the recipient to present further evidence or arguments in connection with the issuance of the notice. The commissioner or such designee shall cancel the notice if the commissioner or such designee is not satisfied by a preponderance of the evidence that the facts underlying such notice do not support the issuance of such notice.

(ii) except as provided for in paragraph (i) of this subdivision, the credit card issuer, fuel distributor or the government entity shall not have any right to a hearing under any other provision of this chapter to challenge the issuance of such notice. Rather, such determination shall be reviewable only by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that (A) such proceeding is commenced within four months of the date the commissioner issued such notice or, if such notice is disputed, within four months of the date the commissioner or such designee upholds such notice in whole or in part, (B) the credit card issuer, fuel distributor, where applicable, and any affected government entity are named as parties to the action, and (C) the only issue which may be considered by such review is whether such notice was within the discretion of the commissioner under this article. Such proceeding shall be instituted in Albany county. Upon the filing of such petition, the court shall have jurisdiction to set aside such notice or to dismiss the petition. The jurisdiction of the supreme court shall be exclusive and its order shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided by law for appeal from a judgment in a special proceeding. All such proceedings for review shall be heard on the petition, transcript and other papers, and on appeal shall be heard on the record, without requirement of printing.

(15) To publish a list on the department's website of marketplace providers whose certificates of authority have been revoked and, if necessary to protect sales tax revenue, provide by regulation or

otherwise that a marketplace seller who is a vendor will be relieved of the duty to collect tax for sales of tangible personal property facilitated by a marketplace provider only if, in addition to the conditions prescribed by paragraph two of subdivision (l) of section eleven hundred thirty-two of this part being met, such marketplace provider is not on such list at the commencement of the quarterly period covered thereby.

16. To publish a list on the department's website regarding booking services that have a valid certificate of authority and, if necessary to protect sales tax revenue, provide by regulation or otherwise that a short term rental unit operator will be relieved of the requirement to register and the duty to collect tax on the rent for occupancy of a short term rental unit facilitated by a booking service only if, in addition to the conditions prescribed by paragraph two of subdivision (m) of section eleven hundred thirty-two and paragraph six of subdivision (a) of section eleven hundred thirty-four of this part being met, such booking service has a valid certificate of authority at the commencement of the quarterly period covered thereby.

§ 1142-A. Special requirements relating to the service of providing parking, garaging or storing for motor vehicles. (a) Every person required to collect the taxes described in paragraph six of subdivision (c) of section eleven hundred five, subdivision (c) of section eleven hundred seven and paragraph one of subdivision (a) of section twelve hundred twelve-A of this chapter, or, if the tax described in subdivision (c) of section eleven hundred seven of this article is not in effect, a similar tax imposed pursuant to the authority of subdivision (a) of section twelve hundred ten of this chapter, in a county with a population density in excess of fifty thousand persons per square mile in any city in this state having a population of one million or more, shall be subject to the requirements set forth in this section, except as otherwise provided herein.

(b) Every person described in subdivision (a) of this section shall keep records in addition to the records required to be kept by section eleven hundred thirty-five of this article. Such additional records

shall include copies of each ticket or other documentation given to each purchaser of such service, which such person shall be required to furnish to each such purchaser at the initiation of such parking, garaging or storing, except as hereinafter provided. Such tickets or other documentation shall be consecutively numbered or issued by a computer, in a manner approved by the commissioner, and shall indicate the date and time of entry of the motor vehicle. The date and time of exit of such motor vehicle shall also be indicated on the ticket or other documentation (or the copy thereof) retained by such person described in subdivision (a) of this section except where such person charges a flat fee for any such service based on time elapsed, the price for such service is indicated on the ticket or other memorandum as a flat fee and it is not the practice of such person to date- and time-stamp the ticket or other documentation when the purchaser pays for such service for which a flat fee is charged. In the case of a monthly or longer term purchaser to whom such a ticket or other documentation is issued, such ticket or other documentation shall include such purchaser's (1) printed name and signature or (2) identification number assigned to such purchaser by such person required to collect tax. Provided, however, that where such person required to collect tax sells such service on a monthly or longer term basis and issues a computer access card or a prenumbered decal or tag to the purchaser, then such person shall not be required to give such a ticket or such other documentation to any such purchaser to whom such card, decal or tag has been issued, or to retain copies thereof. Such person required to collect tax shall retain a list containing the name, address and signature of each monthly or other longer-term purchaser of service, the valid period of such monthly or longer-term service, and the number of authorized vehicles entitled to such parking services, without regard to whether a ticket or other documentation is issued to such purchaser.

(c) Such persons required to collect tax, described in subdivision (a) of this section, shall file, together with, and as a part of, the returns required under sections eleven hundred thirty-six and twelve hundred fifty-one of this chapter, a report or schedule, or make a separate entry thereon, in the discretion of the commissioner, for each separate garage, parking lot or other place of business where such person provides parking, garaging or storing services in such a county.

Such report or schedule shall not include any receipts from any garage, parking lot or other place of business located outside such a county. Such report or schedule shall identify the specific location and address, and licensed capacity if licensed, of each such garage, parking lot or other place of business. If such garage, parking lot or other place of business has been licensed by an agency of a city, the report or schedule shall include any applicable license number. Such report or schedule shall include for each monthly period included therein such schedules of additional information, data and other matters as shall be prescribed by the commissioner of taxation and finance. Such returns required under sections eleven hundred thirty-six and twelve hundred fifty-one for such persons described in subdivision (a) of this section shall be deemed incomplete and not filed unless the separate information required to be reported for each separate garage, parking lot or other place of business is contained therein.

(d) Upon the arrival of the commissioner, or any authorized employee of the department or agent of such commissioner or such department, at the premises of a person required to collect tax, described in subdivision (a) of this section, the announcing by such commissioner, agent or employee of his or her presence and the display of his or her identification to such person or to any officer or employee of such person, such commissioner, employee or agent may, during the hours that such premises are open for business, enter and walk about the portion of the premises in such a county where such person required to collect tax provides such service of parking, garaging or storing for motor vehicles. Such person and the officers and employees of such persons shall not interfere with the commissioner or such employee or agent when such commissioner, employee or agent enters and walks about such premises to observe or record the make, model and license plate number of any vehicle parked, entering, exiting or being operated within such premises, the length of time such vehicle is on such premises, the true motor vehicle capacity of the premises, and the series of tickets or other memoranda, and their numbers, being issued at the time of the observation or recording. Such entering and walking about and such observation and recording are to be performed only in connection with an examination of a return, report or schedule, or entry thereon, of such person required to be filed under or pursuant to articles twenty-eight

and twenty-nine of this chapter or in connection with the liability of such person for tax required to be shown on such return, report or schedule, or during the consideration of the initiation of such an examination. Nothing in this section shall authorize or be construed to authorize a forced entry into the premises; a search of the premises, with or without a warrant; the entry into any vehicle or compartment or container thereof, whether locked or unlocked; the seizure of any person, property, books, records, documents or other matter or thing; or the use of any information obtained by such observation or recording in any civil or criminal proceeding. Provided, however, that: (1) any such information may be used to assess, determine, fix, collect, enforce or administer any tax, fee, penalty or interest imposed on the person required to collect tax, described in subdivision (a) of this section, under or pursuant to articles twenty-eight and twenty-nine of this chapter; and (2) may be used in the prosecution of any crime or offense related thereto pursuant to articles twenty-eight and twenty-nine of this chapter or the penal law where such information was obtained either as a result of the entry and walking about of an area as to which the person required to collect the tax has no reasonable expectation of privacy or as a result of a lawful investigative procedure other than the entry and walking about authorized pursuant to this subdivision. Such entry and walking about shall be sought and made only during the hours that such premises are open for business. The commissioner of taxation and finance, such employee of the department and such agent of the commissioner or such department shall not be required to give notice to such person or such person's representative of an intent to enter the premises prior to the time that such commissioner, employee or agent arrives at such person's premises.

(e) Every person described in subdivision (a) of this section shall, upon receipt of a certificate of authority and on an annual basis thereafter, provided such person periodically re-registers and remains in possession of such certificate of authority, receive from the commissioner a copy of subdivision (d) of this section, a copy of all rules and regulations adopted thereunder, and a written explanation of the power of the commissioner of taxation and finance to enter and walk about and the limitations thereon. Provided, however, that absence of notice will not constitute a defense in any proceeding brought under

this chapter.

(f) The commissioner shall prepare, have printed and distribute to every person described in subdivision (a) of this section, a sign or poster that provides notice that the premises of such person are subject to periodic inspections by the department for purposes of enforcing this article. Such sign or poster must have conspicuous lettering in at least seventy-two point bold face type, except that such sign or poster shall be captioned with the word "notice" in at least two inch lettering. Such person shall prominently display such sign or poster in each place of business where such person provides parking, garaging or storing services.

(g) An organization described in subdivision (a) of section eleven hundred sixteen of this article shall be exempt from the requirements of this section. Nothing in this subdivision shall be construed to exempt any other person from the requirements of this section, whether or not such other person operates a garage, parking or other place of business or sells the services of providing parking, garaging or storing for motor vehicles for or on behalf of such an organization or on the property of such an organization.

(h) The failure of any person described in subdivision (a) of this section to keep any of the records required to be kept by such person in the manner provided for any portion of the period during which tax can be determined or the inability of the commissioner or any authorized employee of the department, or agent of either of them, to enter and walk about such person's premises for the purposes described in subdivision (d) of this section due to such person's lack of cooperation or interference in affording such entering and walking about for such purposes shall be sufficient grounds under subdivision (a) of section eleven hundred thirty-eight of this article for the commissioner to estimate on the basis of such external indices selected by the commissioner the amount of tax that is due from such person.

(i) The commissioner shall promulgate rules and regulations necessary to implement the provisions of this section.

(j) The commissioner, by regulation, shall establish procedures designed to require implementation of subdivision (d) of this section in a manner that will not unreasonably interfere with the operation of the person described in subdivision (a) of this section, with respect to

such person providing the service of parking, garaging or storing of motor vehicles. Such regulations shall take into account reasonable time periods for such commissioner, agent or employee to arrive at the premises of such person.

(k) If a person described in subdivision (a) of this section can demonstrate to the satisfaction of the commissioner that due to the limited annual liability incurred under this article, the provisions of this section create undue hardship for such person, then such person shall not be required to comply with the provisions of this section; provided, however, that such person must comply with such other recordkeeping requirements as the commissioner may require. The commissioner shall establish general rules for which such hardship can be claimed.

§ 1143. Administration of oaths and compelling testimony. (a) The tax commission or its employees or agents duly designated and authorized by it shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this article. The tax commission shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of its duties hereunder and of the enforcement of this article and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before it or excused from attendance.

(b) A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the tax commission under this article.

(c) The officers who serve the summons or subpoena of the tax commission and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the sheriff of any county and his duly appointed deputies or any officers or employees of the department of taxation and finance,

designated to serve such process.

§ 1144. Reference to tax. Whenever reference is made in placards or advertisements or in any other publications to any tax imposed by this article, such reference shall be in substantially the following form: "sales and use tax"; except that in any bill, receipt, statement or other evidence or memorandum of sale, services rendered, amusement charges, dues, rent or occupancy, issued or employed by a person required to collect tax, if the tax is required to be stated separately thereon as provided in subdivision (a) of section eleven hundred thirty-two, the word "tax" will suffice.

§ 1145. Penalties and interest. (a) (1) (i) Any person failing to file a return or to pay or pay over any tax to the tax commission within the time required by or pursuant to this article (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of ten percent of the amount of tax due if such failure is for not more than one month, with an additional one percent for each additional month or fraction thereof during which such failure continues, not exceeding thirty percent in the aggregate. Provided, however, in the case of a failure to file such return within sixty days of the date prescribed for filing of such return by or pursuant to this article (determined with regard to any extension of time for filing), the penalty imposed by this subparagraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return. For the purpose of the preceding sentence, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. In the case of a failure to file a return by a person required to register with the tax commission as provided in section eleven hundred thirty-four, in no event shall the penalty for failure to file a return be less than fifty dollars.

(ii) If any amount of tax is not paid on or before the last date

prescribed in this article for payment, interest on such amount at the rate of fourteen and one-half percent per annum or at the underpayment rate set by the commissioner pursuant to section eleven hundred forty-two of this part, whichever is greater, shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subparagraph shall not be paid if the amount thereof is less than one dollar.

(iii) If the commissioner of taxation and finance determines that such failure or delay was due to reasonable cause and not due to willful neglect, he shall remit all of such penalty and that portion of such interest that exceeds the interest that would be payable if such interest were computed at the underpayment rate set by the commissioner of taxation and finance pursuant to section eleven hundred forty-two. The commissioner shall promulgate rules and regulations as to what constitutes reasonable cause.

(iv) Provided, however, in the case of a long-form, part-quarterly return, no penalty or interest shall be payable with respect to a return and payment of estimated tax required to be filed and paid under subdivisions (a) and (b) of section eleven hundred thirty-seven-A for March, nineteen hundred seventy-six, nineteen hundred seventy-seven, nineteen hundred seventy-eight, nineteen hundred seventy-nine, nineteen hundred eighty, nineteen hundred eighty-one and nineteen hundred eighty-two, if such returns are timely filed, accompanied by a payment of not less than ninety percent of the tax as finally determined to be due and payable for March, nineteen hundred seventy-six, nineteen hundred seventy-seven, nineteen hundred seventy-eight, nineteen hundred seventy-nine, nineteen hundred eighty, nineteen hundred eighty-one and nineteen hundred eighty-two. Provided, further, that interest, at the rate authorized under subdivision nine of section eleven hundred forty-two, shall be payable upon the amount of any underpayment of the tax due with the returns due on March twentieth, nineteen hundred seventy-six, nineteen hundred seventy-seven, nineteen hundred seventy-eight, nineteen hundred seventy-nine, nineteen hundred eighty, nineteen hundred eighty-one and nineteen hundred eighty-two, for the period of such underpayment, but not beyond the due date of the next part-quarterly return.

(v) Provided, further, in the case of a March estimated return, no penalty or interest shall be payable with respect to a return and payment of estimated tax required to be filed and paid under subdivision (c) of section eleven hundred thirty-seven-A for March, nineteen hundred eighty-three and each subsequent March through and including March, nineteen hundred ninety, if such returns are timely filed, accompanied by a payment of either: (A) not less than ninety percent of the tax as finally determined to be due and payable for the month of March in which the March estimated tax return is required to be filed; or (B) in the event such person has had at least four successive quarterly tax periods immediately preceding the March twentieth for which the return is to be filed, at least one-third of the sales and compensating use taxes payable by such person to the commissioner of taxation and finance in the comparable quarter of the immediately preceding year. However, where interest is payable because of a failure to meet the requirements of either clause (A) or (B) of this subparagraph such interest shall be at the underpayment rate authorized under subdivision nine of section eleven hundred forty-two upon any underpayment of the amount of tax due for the period of such underpayment, but not beyond the due date of the next part-quarterly return. For purposes of this subparagraph, the underpayment of the amount of tax due shall be: (A) the difference between the amount paid and ninety percent of the amount finally determined to be due and payable for March, nineteen hundred eighty-three and for March of each subsequent year through and including March, nineteen hundred ninety, or (B) if such person has had at least four successive quarterly tax periods immediately preceding the March for which the return was filed, the difference between the amount paid and one-third of the sales and compensating use taxes payable by such person to the commissioner for the comparable quarter of the immediately preceding year under this article, whichever is less. Notwithstanding the preceding sentence, for purposes of this subparagraph: (1) the tax as finally determined to be due and payable for such month of March, and (2) the sales and compensating use taxes payable for the comparable quarter of the immediately preceding year; shall not include taxes imposed by section eleven hundred seven or eleven hundred eight of this article or pursuant to the authority of article twenty-nine of this chapter. Provided, however, all other provisions of this article shall

apply in the determination of such taxes.

(vi) Any person required by this article to file a return, who omits from the total amount of state and local sales and compensating use taxes required to be shown on a return an amount which is in excess of twenty-five percent of the amount of such taxes required to be shown on the return shall be subject to a penalty equal to ten percent of the amount of such omission. The amount of the omission under the preceding sentence shall be reduced by that portion of the omission which is attributable to the tax treatment of any item by such person if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. If the tax commission determines that such omission was due to reasonable cause and not due to willful neglect, it shall remit all of such penalty. The penalty provided for in this subparagraph shall not apply to any return of estimated tax required to be filed under section eleven hundred thirty-seven-A.

(vii) Any owner of a filling station who shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which (A) the prepaid tax imposed by section eleven hundred two of this article has not been assumed or paid by a distributor registered as such under article twelve-A of this chapter, or (B) the prepaid tax imposed by section eleven hundred two of this article was required to have been passed through to him and has not been included in the cost of such fuel to him shall be liable for a penalty in the amount of twice the tax so not assumed or paid, or included. Such penalty shall be determined, assessed, collected and paid in the same manner as taxes imposed by this article and all the provisions of this article relating thereto shall be deemed also to refer to the penalty imposed by this paragraph and, for this purpose, the term "person required to collect tax" shall be deemed to include an owner of a filling station. Such penalty may be determined at any time within three years after such motor fuel or diesel motor fuel shall have come into his custody, possession or control. For purposes of this subparagraph, such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel or diesel motor fuel on which (A) such tax has not been assumed or paid by a distributor registered as such or

(B) such tax was required to have been passed through to him and has not been included in the cost of such fuel to him where such owner has knowledge of the requirement that such taxes be paid and where, to his knowledge, such taxes have not been so included. For purposes of this subparagraph, it shall be presumptive evidence that such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel or diesel motor fuel (A) on which such tax has not been assumed or paid by a distributor registered as such or (B) on which such tax was required to have been passed through to him and has not been included in the cost of such fuel to him where such owner has not received the certification required by subdivision (h) of section eleven hundred thirty-two of this article at the time of delivery of such motor fuel or diesel motor fuel or, in those circumstances where the commissioner has authorized the delivery of such certification at a time after delivery of the motor fuel or diesel motor fuel, at the time prescribed by the commissioner.

(viii) Any person required to collect tax who sells cigarettes at retail and who shall willfully and knowingly have in such person's custody or possession or under such person's control any cigarettes on which (A) the prepaid tax imposed by section eleven hundred three of this article has not been assumed or paid by an agent licensed as such under article twenty of this chapter, or (B) the prepaid tax imposed by such section eleven hundred three was required to have been passed through to such person and has not been included in the cost of such cigarettes to such person, shall be liable for a penalty in the amount of twice the tax not so assumed or paid, or included. Such penalty shall be determined, assessed, collected and paid in the same manner as taxes imposed by this article and all the provisions of this article relating thereto shall be deemed also to refer to the penalty imposed by this subparagraph. Such penalty may be determined at any time within three years after such cigarettes shall have come into such person's custody or possession or under such person's control. For purposes of this subparagraph, such person shall willfully and knowingly have in such person's custody or possession or under such person's control cigarettes on which (A) such tax has not been assumed or paid by an agent licensed as such under article twenty of this chapter, or (B) such tax was required to have been passed through to such person and has not been

included in the cost of such cigarettes to such person, where such person has knowledge of the requirement that such taxes be paid or assumed or so included and where, to such person's knowledge, such taxes have not been so paid or assumed or so included. For purposes of this subparagraph, it shall be presumptive evidence that such person shall willfully and knowingly have in such person's custody or possession or under such person's control cigarettes on which (A) such tax has not been assumed or paid by an agent authorized as such under such article twenty or (B) such tax was required to have been passed through to such person and has not been included in the cost of such cigarettes to such person where such person has not received the certification required by subdivision (k) of section eleven hundred thirty-two of this article at the time of delivery of such cigarettes or, in those circumstances where the commissioner has authorized the delivery of such certification at a time after delivery of the cigarettes, at the time prescribed by the commissioner.

(ix) In addition to any other penalty or interest under this article or other law, any credit card issuer or fuel distributor, as defined in subdivision (h) of section eleven hundred thirty-nine of this part, who receives a refund or credit pursuant to such subdivision knowing, at the time the refund application is filed or the credit is taken, that the motor fuel or diesel motor fuel purchased was not for the government entity's own use or consumption, shall be liable for a penalty in the amount of the tax refunded or credited, plus applicable interest due under this article.

(2) If the failure to pay or pay over any tax to the commissioner within the time required by this article is due to fraud, in lieu of the penalties and interest provided for in subparagraphs (i) and (ii) of paragraph one of this subdivision, there shall be added to the tax (i) a penalty of two times the amount of the tax due, plus (ii) interest on such unpaid tax at the rate of fourteen and one-half percent per annum or the underpayment rate of interest set by the commissioner pursuant to section eleven hundred forty-two of this part, whichever is greater, for the period beginning on the last day prescribed by this article for the payment of such tax (determined without regard to any extension of time for paying) and ending on the day on which such tax is paid.

(3) (i) Any person required to obtain a certificate of authority under

section eleven hundred thirty-four of this part who, without possessing a valid certificate of authority, (A) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel or short term rental unit, (B) purchases or sells tangible personal property for resale, (C) sells petroleum products, or (D) sells cigarettes shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding five hundred dollars for the first day on which such sales or purchases are made, plus an amount not exceeding two hundred dollars for each subsequent day on which such sales or purchases are made, not to exceed ten thousand dollars in the aggregate.

(ii) Any person who fails to surrender a certificate of authority when a notice of revocation or suspension has become final shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding five hundred dollars for the first day of such failure, together with a penalty in an amount not exceeding two hundred dollars for each subsequent day of such failure, not to exceed ten thousand dollars in the aggregate.

(iii) Any person described in paragraph one or two of subdivision (a) of section eleven hundred thirty-four who takes possession of or pays for business assets under circumstances requiring notification by such person to the tax commission pursuant to subdivision (c) of section eleven hundred forty-one without having filed a certificate of registration pursuant to section eleven hundred thirty-four shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding two hundred dollars.

(iv) If the tax commission determines that any failure or act described in this paragraph was due to reasonable cause and not due to willful neglect, it may remit all or part of such penalty.

(4) Any person required by this article to display a certificate of authority, who fails to display such certificate in the manner required by this article or any rule or regulation adopted by the tax commission in connection with such requirement shall, in addition to any other penalty imposed by this chapter, be subject to a penalty of fifty dollars. If the tax commission determines that such failure was due to reasonable cause and not due to willful neglect, it may remit all or part of such penalty.

(5) Any person who issues a false or fraudulent resale or other exemption certificate or document with intent to evade tax shall, in addition to any other penalty imposed by this chapter, be subject to a penalty of one hundred percent of the tax that would have been due had there not been a misuse of such certificate or document and a penalty of fifty dollars for each such certificate or document.

(6) The tax commission shall promulgate rules and regulations as to what constitutes reasonable cause for purposes of this subdivision.

(7) The penalties and interest provided for in this subdivision shall be paid and disposed of in the same manner as other revenues from this article. Such penalties and interest may be determined, assessed, collected and enforced in the same manner as the tax imposed by this article. Interest under this subdivision shall be compounded daily.

(8) Notwithstanding any other provision of this article, any person who willfully files or amends a return that contains false information to reduce or eliminate a liability shall be subject to a penalty not to exceed one thousand dollars per return. This penalty shall be in addition to any other penalty provided by law.

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

(c) Any person failing to file a return or to pay any tax required to be prepaid to the commissioner with respect to motor fuel or diesel motor fuel pursuant to the provisions of section eleven hundred two of this article within the time required by this article shall, in addition to any other penalty provided in this article or otherwise imposed by law, be subject to a penalty equal to the amount of tax required to be so prepaid pursuant to the provisions of such section eleven hundred two. If the commissioner determines that such failure to file a return or to pay any such tax was due to reasonable cause and not due to willful neglect, he shall remit all or any part of such penalty.

(d) The certificate of the tax commission to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this article shall be presumptive evidence thereof.

(e) Any officer, director, shareholder or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an

individual proprietorship, who as such officer, director, shareholder, employee or manager is under a duty to act for such corporation, partnership, limited liability company or proprietorship in complying with any requirement of this article, and any member of a partnership or limited liability company, which fails to pay the tax required to be prepaid by section eleven hundred two or eleven hundred three of this article, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax not paid, plus penalties and interest computed pursuant to subdivision (a) of this section as if such person were a distributor under article twelve-a of this chapter or an agent under article twenty of this chapter, respectively. If the commissioner determines that such failure was due to reasonable cause and not due to willful neglect, the commissioner shall remit all or part of such penalty imposed under this subdivision. Such penalty shall be determined, assessed, collected and paid in the same manner as the tax required to be prepaid by section eleven hundred two or eleven hundred three, as the case may be, of this article and shall be disposed of as provided with respect to moneys derived from either such tax, respectively. Provided, however, that the penalty provided for by this subdivision shall not be imposed on any person on account of the failure of such a distributor or agent to pay the tax required to be prepaid by section eleven hundred two or eleven hundred three, respectively, of this article if such person is liable for such tax pursuant to subdivision (b) of such section eleven hundred two or subdivision (b) of such section eleven hundred three, respectively.

(f) Any entertainment promoter who authorizes an entertainment vendor to make taxable sales of tangible personal property at an entertainment event with respect to which he is a promoter, where such vendor is not registered under subdivision (a) of section eleven hundred thirty-four shall, in addition to any other penalty provided in this article or otherwise imposed by law, be subject to a penalty of not more than ten thousand dollars with respect to each such entertainment event.

(g) (1) Any person failing to keep any of the additional records required to be kept pursuant to section eleven hundred forty-two-A of this article, shall, in addition to any other penalty provided in this article or otherwise imposed by law, be subject to a penalty in an amount not to exceed five hundred dollars where such records have not

been kept for a month or part thereof. Such penalty for failure to keep such records shall not be imposed and collected more than once for any such failure to keep records for such month or part thereof.

(2) Any person described in subdivision (a) of section eleven hundred forty-two-A of this chapter who fails to consent to the entering and walking about for the purposes described in such section, or who interferes with the commissioner or any authorized employee of the department, or the agent of either of them, with respect to entering and walking about for the purposes described in such section, or whose employee fails to consent or interferes with such entering and walking about for the purposes described in such section, shall, in addition to any other penalty provided in this article or otherwise imposed by law, be subject to a penalty in an amount not to exceed five hundred dollars for the first day of such failure to consent or the first day of such interference. Each subsequent day any such failure to consent to or interference with such entering and walking about shall occur shall be subject to an additional penalty not to exceed one thousand dollars. In no event, shall such penalties exceed ten thousand dollars in the aggregate.

(3) If the commissioner determines that such failure to keep such records described in paragraph one of this subdivision or that such failure to consent to or such interference with the entering and walking about described in paragraph two of this subdivision was due to reasonable cause and not due to willful neglect, the commissioner shall remit all or any part of such penalty. Such penalties shall be paid and disposed of in the same manner as other revenues from this article. Such penalties shall be determined, assessed, collected, paid and enforced in the same manner as the tax imposed by this article and all the provisions of this article relating to tax shall be deemed also to apply to the penalties imposed by this subdivision.

(h) (1) Any person required to file a report pursuant to subdivision (h) of section eleven hundred thirty-six of this article, who fails to include the name or certificate of authority number of any itinerant vendor or the sales for resale made to such vendor and the amounts paid, charged or due thereon, required to be included in such report, or who fails to include such information which is true and correct, shall, in addition to any other penalty provided in this article or otherwise

imposed by law, be subject to a penalty computed by multiplying an amount not to exceed fifty dollars by the number of itinerant vendors required to be included in such report that are not so included (whether or not such a report is filed) or for which incomplete or incorrect information has been reported.

(2) Any person failing to file a report required pursuant to subdivision (h) of section eleven hundred thirty-six of this article within the time required by regulations promulgated pursuant to such subdivision, shall, in addition to any other penalty provided in this article or otherwise imposed by law, be subject to a penalty in an amount not to exceed five hundred dollars for each such failure.

(3) In no event shall the penalty imposed by paragraph one of this subdivision, or the aggregate of the penalties imposed by paragraphs one and two of this subdivision, exceed five thousand dollars for any twelve month period commencing June first and ending May thirty-first of the following year.

(4) If the commissioner determines that any failure to include information, or to include true and correct information, in a report required to be filed, or failure to timely file a report, as described in this subdivision, was due to reasonable cause and not due to willful neglect, the commissioner shall remit all or part of any of the penalties imposed under this subdivision. Such penalties shall be determined, assessed, collected, paid, disposed of and enforced in the same manner as taxes imposed by this article and all the provisions of this article relating thereto shall be deemed also to refer to such penalties.

* (i) Any person required to make or maintain records under this article (but not including the records required under section eleven hundred forty-two-A of this part) who fails to make or maintain or make available to the commissioner these records is subject to a penalty not to exceed one thousand dollars for the first quarter or part thereof for which the failure occurs and not to exceed five thousand dollars for each additional quarterly period or part thereof for which the failure occurs. This penalty is in addition to any other penalty provided for in this article but may not be imposed and collected more than once for failures for the same quarterly period or part thereof. If the commissioner determines that a failure to make or maintain or make

available records in any quarter was entirely due to reasonable cause and not to willful neglect, the commissioner must remit the penalty imposed for that quarter. These penalties will be paid and disposed of in the same manner as other revenues from this article. These penalties will be determined, assessed, collected, paid and enforced in the same manner as the tax imposed by this article, and all the provisions of this article relating to tax will be deemed also to apply to the penalties imposed by this subdivision. For purposes of the penalty imposed by this subdivision, a person will be considered to have failed to make or maintain the required records when the records made or maintained by that person for a quarterly period make it virtually impossible to verify sales receipts or the taxability of those receipts and to conduct a complete audit.

* NB There are 3 sb (i)'s

* (i)(1) Every person required to file an information return by subdivision (i) of section eleven hundred thirty-six of this part who (A) fails to provide any of the information required by paragraph one or two of subdivision (i) of section eleven hundred thirty-six of this part for a vendor, operator, or recipient, or who fails to include any such information that is true and correct (whether or not such a report is filed) for a vendor, operator, or recipient, or (B) fails to provide the information required by paragraph four of subdivision (i) of section eleven hundred thirty-six of this part to a vendor, operator, or recipient specified in paragraph four of subdivision (i) of section eleven hundred thirty-six of this part, will, in addition to any other penalty provided in this article or otherwise imposed by law, be subject to a penalty of five hundred dollars for ten or fewer failures, and up to fifty dollars for each additional failure.

(2) Every person failing to file an information return required by subdivision (i) of section eleven hundred thirty-six of this part within the time required by subdivision (i) of section eleven hundred thirty-six of this part will, in addition to any other penalty provided for in this article or otherwise imposed by law, be subject to a penalty in an amount not to exceed two thousand dollars for each such failure, provided that the minimum penalty under this paragraph is five hundred dollars.

(3) In no event will the penalty imposed by paragraph one, or the

aggregate of the penalties imposed under paragraphs one and two of this subdivision, exceed ten thousand dollars for any annual filing period as described by paragraph three of subdivision (i) of section eleven hundred thirty-six of this part.

(4) If the commissioner determines that any of the failures that are subject to penalty under this subdivision was entirely due to reasonable cause and not due to willful neglect, the commissioner must remit the penalty imposed under this subdivision. These penalties will be determined, assessed, collected, paid, disposed of and enforced in the same manner as taxes imposed by this article and all the provisions of this article relating thereto will be deemed also to refer to these penalties.

* NB There are 3 sb (i)'s

* (i) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. Any person who, with the intent that tax be evaded, for a fee or other compensation or as an incident to the performance of other services for which that person receives compensation, aids or assists in, or procures, counsels, or advises the preparation or presentation under this article, or in connection with any matter arising under this article, of any return, report, declaration, statement or other document that is fraudulent or false as to any material matter, or supplies any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, report, declaration, statement or other document, will pay a penalty not exceeding five thousand dollars. The definitions in subsection (l) of section ten hundred eighty-five of this chapter apply for the purposes of this penalty.

* NB There are 3 sb (i)'s

* (j) Any person required to make or maintain records under this article who fails to present and make available these records in an auditable form is subject to a penalty not to exceed one thousand dollars for each quarterly period or part thereof for which records maintained by that person are not presented and made available by that person in auditable form, even if these records are adequate to verify credits, receipts, and the taxability thereof and to perform a complete audit. This penalty is in addition to any other penalty provided for in

this article, but will not be imposed and collected more than once for these failures for the same quarterly period or part thereof. If the commissioner determines that any failure described in this subdivision for a quarterly period was entirely due to reasonable cause and not to willful neglect, the commissioner must remit the penalty imposed for that quarter. The penalties imposed by this subdivision will be paid and disposed of in the same manner as other revenues from this article. These penalties will be determined, assessed, collected, paid and enforced in the same manner as the tax imposed by this article, and all the provisions of this article relating to tax will be deemed also to apply to the penalties imposed by this subdivision. For purposes of the penalty imposed by this subdivision, a person will be considered to have failed to present and make records available in auditable form when the records presented by that person for that quarter lack sufficient organization, such as by date, invoice number, sales receipts, or sequential numbering, or are otherwise inadequate (without reorganizing, reordering or otherwise rearranging the records into an auditable form) to permit direct reconciliation of the receipts, invoices or other source documents with the entries for the quarterly period in the books and records and on the returns of that person.

* NB There are 2 sb (j)'s

(j) False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department will be subject to a penalty of one hundred dollars per document submitted, or five hundred dollars per tax return submitted. This penalty will be in addition to any other penalty provided by law.

* NB There are 2 sb (j)'s

(k) Any person who, having elected to maintain in an electronic format any portion or all of the records he or she is required to make and maintain by this article, fails to present and make these records available and accessible to the commissioner in electronic format, is subject to a penalty not to exceed five thousand dollars for each quarterly period or part thereof for which these electronic records are not presented and made available and accessible upon request, notwithstanding that the records may also be maintained and available in hard copy format. This penalty is in addition to any other penalty provided for in this article, but may not be imposed and collected more

than once for a failure for the same quarterly period or part thereof. Provided, however, nothing in this subdivision will prevent the separate imposition, if applicable, of any penalty imposed by subdivision (i) or (j) of this section for the same quarterly period or part thereof. If the commissioner determines that the failure to present and make electronically maintained records available and accessible for a quarterly period was entirely due to reasonable cause and not to willful neglect, the commissioner must remit the penalty imposed for that quarter. These penalties will be paid and disposed of in the same manner as other revenues from this article. These penalties will be determined, assessed, collected, paid and enforced in the same manner as the tax imposed by this article, and all the provisions of this article relating to tax will be deemed also to apply to the penalty imposed by this subdivision. For purposes of the penalty imposed by this subdivision, a failure to present and make available and accessible a record maintained in electronic format includes not only the denial of access to the requested records that were maintained electronically, but also the failure to make available to the commissioner the information, knowledge, or means necessary to access and otherwise use the electronically maintained records in the inspection and examination of these records.

§ 1146. Returns to be secret. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department of taxation and finance, any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed with the commissioner pursuant to this article, to divulge or make known in any manner any particulars set forth or disclosed in any such return or report. The officers charged with the custody of such returns and reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of the tax law or in any other action or proceeding involving the collection of a tax due under this chapter to which the

state or the commissioner is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this article when the returns, reports or facts shown thereby are directly involved in such action, proceeding or hearing, in any of which events the court, or in the case of a hearing, the commissioner may require the production of, and may admit into evidence, so much of said returns, reports or of the facts shown thereby, as are pertinent to the action, proceeding or hearing and no more. The commissioner may, nevertheless, publish a copy or a summary of any decision rendered after a hearing required by this article. Nothing herein shall be construed to prohibit the delivery to a person who has filed a return or report or his duly authorized representative of a certified copy of any return or report filed in connection with his tax. Nor shall anything herein be construed to prohibit the delivery to a person required to collect the tax under this article or a purchaser, transferee or assignee personally liable under the provisions of subdivision (c) of section eleven hundred forty-one of this chapter for the tax due from the seller, transferor or assignor, of any return or report filed under this article in connection with such tax provided, however, that there may be delivered only so much of said return, report or of the facts shown thereby as are pertinent to a determination of the taxes due or liability owed by such person or purchaser, transferee or assignee and no more or to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the return or report of any person required to collect or pay the tax who shall bring action to review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or the attorney general or has been instituted, or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a person required to collect or pay the tax under this article. Provided, further, nothing herein shall be construed to prohibit the disclosure, in such manner as the commissioner deems appropriate, of the names and other appropriate identifying information of those persons holding

certificates of authority pursuant to section eleven hundred thirty-four of this article, those persons whose certificates of authority have been suspended or revoked, those persons whose certificates of authority have expired, those persons who have filed a certificate of registration for a certificate of authority where the commissioner has refused to issue a certificate of authority, those persons holding direct payment permits pursuant to section eleven hundred thirty-two or those persons whose direct payment permits have been suspended or revoked by the commissioner; and provided further that nothing herein shall be construed to prohibit the disclosure, in such manner as the commissioner deems appropriate, of information related to the tax on admissions to race tracks and simulcast facilities to the gaming commission or the division of the budget.

(b) Notwithstanding the provisions of subdivision (a) of this section, the tax commission may, in its discretion, permit the proper officer of any city, county or school district imposing any tax authorized by article twenty-nine, or the authorized representative of such officer, to inspect any return filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply him with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article; but such permission shall be granted or such information furnished only if such city, county or school district shall have furnished the tax commission with all information requested by it pursuant to article twenty-nine of this chapter and shall have permitted the tax commission or its authorized representative to make any inspection of returns or reports filed with such city, county or school district which the tax commission may have requested pursuant to said section.

(c) Notwithstanding the provisions of subdivision (a) of this section, the tax commission, in its discretion, may require or permit any or all persons liable for any tax or required to collect any tax imposed by this article, to make payment to banks, banking houses or trust companies designated by the tax commission and to file returns with such banks, banking houses or trust companies as agents of the tax commission, in lieu of paying any such tax directly to the tax commission. However, the tax commission shall designate only such banks,

banking houses or trust companies as are already designated by the comptroller as depositories pursuant to section eleven hundred forty-eight.

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

(e) Returns and reports filed under this article shall be preserved for three years and thereafter until the tax commission orders them to be destroyed.

(f) (1) Any officer or employee of the state who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office for a period

of five years thereafter.

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

(g) Notwithstanding the provisions of subdivision (a) of this section, if the commissioner determines that a person required to collect tax is liable for any tax, penalty or interest under this article or is liable for a penalty under subdivision (e) of section eleven hundred forty-five of this article with respect to any failure, upon request in writing of such person, the commissioner shall disclose in writing to such person (1) the name of any other person required to collect tax or any other person liable for such penalty under such subdivision (e) whom the commissioner has determined to be liable for the same tax, penalty or interest or for such penalty with respect to such failure, and (2) whether the commissioner has attempted to collect such tax, penalty or interest or such penalty from such other person, the general nature of such collection activities, and the amount collected.

(h) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns or reports specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general

municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature, or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return or report, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such report or return, and any social security numbers, account numbers and residential address information.

(2) No returns or reports shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns or reports have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or reports or return or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns or reports are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 1147. Notices and limitations of time. (a) (1) Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this article or in any application

made by him or, if no return has been filed or application made, then to such address as may be obtainable. A notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of mailing of such notice.

(2) If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulation of the tax commission.

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

(4)(A) Any reference in paragraph two of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph two of this subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner finds that any delivery service designated by such secretary is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this article, or may withdraw any such designation if he finds that a delivery service so designated is inadequate for the needs of the state. Any reference in paragraph two of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner and any reference in paragraph two of this subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph two of this subdivision. If the commissioner finds that any equivalent of registered or certified mail designated by such secretary or the commissioner is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article.

(b) The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the state or the tax commission to levy, appraise, assess, determine or enforce the

collection of any tax or penalty provided by this article. However, except in the case of a willfully false or fraudulent return with intent to evade the tax no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law, the tax may be assessed at any time. Where a purchaser furnishes a vendor with a false or fraudulent certificate of resale or other exemption certificate or other document with intent to evade the tax, the tax may be assessed against such purchaser at any time. For purposes of this subdivision, a return filed before the last day prescribed by law or regulation for the filing thereof or before the last day of any extension of time for the filing thereof shall be deemed to be filed on such last day. Notwithstanding any other provision of this article, if the time to assess additional tax would otherwise have expired on or before December nineteenth, nineteen hundred sixty-nine, the time to assess such additional tax is hereby extended to and including December twentieth, nineteen hundred sixty-nine, except that it may be further extended by a taxpayer's consent in writing as provided in subdivision (c) hereof.

(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for credit or refund pursuant to section eleven hundred thirty-nine shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax.

(d) The limitation of time for the assessment of additional tax, shall, after the mailing of a notice of determination, be suspended with respect to the amount of additional tax asserted in such notice until the expiration of the time for filing a petition contesting such notice or, if a timely petition with respect to the amount asserted in such notice has been filed with the division of tax appeals, until the

determination of the administrative law judge or the decision of the tax appeals tribunal has become final. A determination of an administrative law judge in the division of tax appeals shall become final in accordance with subdivision four of section two thousand ten of this chapter. A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in paragraph four of subdivision (a) of section eleven hundred thirty-eight of this article for making an application for review if no such application has been duly made within such time, or, if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of such decision is served as provided in section two thousand sixteen of this chapter.

§ 1148. Deposit and disposition of revenue. (a) All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter; provided however, the comptroller shall on or before the twelfth day of each month, pay all such taxes, interest and penalties collected under this article and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the general fund of the state treasury.

(b) Provided however, before the funds may be distributed pursuant to subdivision (a) of this section, such funds shall be distributed as otherwise provided in sections ninety-two-d, ninety-two-h, and ninety-two-r of the state finance law and sections eleven hundred two, eleven hundred four and eleven hundred nine of this article.

(c) Provided however, after funds are distributed pursuant to subdivision (b) of this section but before such funds are distributed pursuant to subdivision (a) of this section, funds shall be deposited by the comptroller into the New York central business district trust fund established pursuant to section ninety-nine-ff of the state finance law in accordance with the following schedule: (1) in state fiscal year two

thousand nineteen - two thousand twenty, one hundred twelve million five hundred thousand dollars; (2) in state fiscal year two thousand twenty - two thousand twenty-one, one hundred fifty million dollars; and (3) in state fiscal year two thousand twenty-one - two thousand twenty-two and every succeeding state fiscal year, an amount equal to one hundred one percent of the amount deposited in the immediately preceding state fiscal year. The funds deposited into the New York central business district trust fund shall be deposited monthly in equal installments.

PART V

FEE ON PAGING DEVICES

§ 1150. Special fee on paging devices. (a) For purposes of this section the following definitions shall apply:

(1) "Paging service." The providing of a system for transmitting signals to a paging device.

(2) "Paging device." A mobile or portable receiver designed principally to receive transmissions intended to summon or alert the user of the device.

(b) Imposition. (1) There is hereby imposed and there shall be paid a fee on each paging device used or authorized for use in conjunction with a paging service, where such service is provided for consideration. The amount of the fee shall be one dollar for each such paging device for each month, or portion thereof, during which such device is so used or authorized for use.

(2) (A) Collection and payment. Such fee shall be collected by the vendor of the paging service from the purchaser of the paging service.

(B) Where the fee imposed under paragraph one of this subdivision is not required to be collected by the vendor under subparagraph (A) of this paragraph, the purchaser of such service shall remit such fee directly to the commissioner of taxation and finance.

(3) Returns with payment. (A) Every person required to collect the fee under subparagraph (A) of paragraph two of this subdivision shall file a return and pay the fee required to be collected to the commissioner of taxation and finance on or before the twentieth day after the close of

the quarterly period in which the paging device was used or authorized for use, as such period is described in paragraph (b) of section eleven hundred thirty-six of this article.

(B) A purchaser subject to subparagraph (B) of paragraph two of this subdivision shall file a return and pay the fee required to be paid within twenty days after the close of such quarterly period in which a paging device subject to the fee was used or authorized for use.

(4) Notwithstanding any provision of this article to the contrary, a person described in paragraph one, two or three of subdivision (a) of section eleven hundred sixteen of this article, and any voluntary fire or ambulance company exempt from the taxes imposed under this article pursuant to paragraph four of subdivision (a) of such section, shall not be subject to the fee imposed by this section.

(c) The fee imposed by this section shall be administered and collected in a like manner as the taxes imposed under this article, and the definitions and the provisions applicable to the administration, collection, determination, enforcement, and disposition of the taxes imposed by this article shall apply to the fee imposed by this section insofar as such provisions can be made applicable to such fee with the limitations set forth herein and such modifications as may be necessary in order to adapt such provisions to the fee so imposed. Such provisions shall apply with the same force and effect as if the language of such provisions had been set forth in full in this section and had expressly referred to the fee imposed by this section except to the extent that any of such provisions is either inconsistent with or is not relevant to this section. Provided, however, any reference in this article to the term "tax" shall be read as "fee" and the exemption provisions in part three of this article shall not apply except as provided in paragraph four of subdivision (b) of this section. Every person required to collect or pay the fee provided for in this section shall keep such records as may be required by the commissioner.

ARTICLE 28-A

SPECIAL TAX ON PASSENGER CAR RENTALS

Section 1160. Special tax on passenger car rentals.

1165. Administrative provisions.

1166. Transitional provisions.

1166-a. Special supplemental tax on passenger car rentals within the metropolitan commuter transportation district.

1166-b. Special supplemental tax on passenger car rentals outside of the metropolitan commuter transportation district.

1167. Deposit and disposition of revenue.

§ 1160. Special tax on passenger car rentals. (a) (1) In addition to any tax imposed under any other article of this chapter, there is hereby imposed and there shall be paid a tax of six percent upon the receipts from every rental of a passenger car which is a retail sale of such passenger car.

(2) Except to the extent that a passenger car rental described in paragraph one of this subdivision has already been or will be subject to the tax imposed under such paragraph and except as otherwise exempted under this article, there is hereby imposed on every person and there shall be paid a use tax for the use within this state of any passenger car rented by the user, which is a purchase at retail of such passenger car, but not including any lease of a passenger car to which subdivision (i) of section eleven hundred eleven of this chapter applies. For purposes of this paragraph, the tax shall be at the rate of six percent of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this chapter, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(b) For purposes of this section, the following definitions shall apply:

(1) Motor vehicle. A motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law, but not including a motorcycle.

(2) Passenger car. A motor vehicle having a gross vehicle weight of nine thousand pounds or less with a seating capacity of nine persons or less designed for passenger transportation.

(3) Rental. The transfer of possession of a motor vehicle, whether or not the motor vehicle is required to be or is registered by this state, for a consideration, without the transfer of the ownership of such motor vehicle, but not including a lease described in subdivision (i) of section eleven hundred eleven of this chapter.

(c) The provisions of this section shall not apply to peer-to-peer car sharing as defined in section nine hundred of the general business law and which is subject to the taxes set forth in article twenty-eight-D of this chapter.

§ 1165. Administrative provisions. The taxes imposed by this article shall be administered and collected in a like manner as and jointly with the taxes imposed by sections eleven hundred five and eleven hundred ten of article twenty-eight of this chapter. All of the provisions of such article twenty-eight (except sections eleven hundred seven, eleven hundred eight, eleven hundred forty-eight, and, for purposes of the tax imposed by section eleven hundred sixty, section eleven hundred nine) relating to or applicable to the administration, collection and review of the taxes imposed by such sections eleven hundred five and eleven hundred ten, including, but not limited to, the provisions relating to definitions, exemptions, returns, personal liability for the tax, collection of tax from the customer, collection of tax at the time of registration of a motor vehicle and payment of tax by a person required to file a return, shall apply to the taxes imposed by this article so far as such provisions can be made applicable to the taxes imposed by this article with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the taxes so imposed. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the taxes imposed by this article. For purposes of this article, any reference in article twenty-eight to the tax or taxes imposed by such article shall be deemed to refer to the taxes imposed by this article also unless a different meaning is clearly required. Provided, further, however, that the provisions of subdivision seven of section eleven

hundred eighteen of this chapter shall apply to the taxes on uses within this state imposed by this article only in the event that the rate of the retail sales or use tax paid, under the conditions described in such subdivision seven, to any other state or jurisdiction within any other state exceeds the aggregate rate of the compensating use tax imposed under section eleven hundred ten of this chapter and any compensating use tax imposed pursuant to the authority of article twenty-nine of this chapter, and in such event only with respect to the difference between the rate paid to such other state or jurisdiction thereof and such aggregate rate. Provided, further, that for purposes of this article and for articles twenty-eight and twenty-nine of this chapter, the provisions of section eleven hundred seventeen of this chapter shall not apply to the rental, as such term is defined in this article, of motor vehicles and that the provisions contained in section eleven hundred thirty-six of this chapter with respect to filing a part-quarterly return monthly and section eleven hundred thirty-seven-A of this chapter relating to returns and payments of estimated tax shall not apply to the taxes imposed under this article.

§ 1166. Transitional provisions. With respect to the tax imposed under section eleven hundred sixty of this article effective June first, nineteen hundred ninety, the provisions of subdivision (a) of section eleven hundred six of this chapter shall apply, except that for the purposes of this section, all references in said subdivision (a) of such section eleven hundred six to August first, nineteen hundred sixty-five, shall be read as referring to the effective date of such section eleven hundred sixty, and all references in said subdivision (a) of such section eleven hundred six to April first, nineteen hundred sixty-five shall be read as referring to the date four months prior to the effective date of such section eleven hundred sixty. Nothing herein contained shall be deemed to change the taxable status of any sale or use which occurred prior to such effective date, and provided further that the reference in subdivision one of section eleven hundred eighteen of this chapter to August first, nineteen hundred sixty-five, shall be read as referring to the effective date of section eleven hundred sixty of this article.

§ 1166-a. Special supplemental tax on passenger car rentals within the metropolitan commuter transportation district. (a) In addition to the tax imposed under section eleven hundred sixty of this article and in addition to any tax imposed under any other article of this chapter, there is hereby imposed and there shall be paid a tax at the rate of six percent upon the receipts from every rental of a passenger car which is a retail sale of such passenger car within the metropolitan commuter transportation district as defined in subsection (a) of section eight hundred of this chapter.

(b) Except to the extent that a passenger car rental described in subdivision (a) of this section, or section eleven hundred sixty-six-b of this article, has already been or will be subject to the tax imposed under such subdivision or section and except as otherwise exempted under this article, there is hereby imposed on every person and there shall be paid a use tax for the use within the metropolitan commuter transportation district as defined in subsection (a) of section eight hundred of this chapter; of any passenger car rented by the user that is a purchase at retail of such passenger car, but not including any lease of a passenger car to which subdivision (i) of section eleven hundred eleven of this chapter applies. For purposes of this subdivision, the tax shall be at the rate of six percent of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this chapter, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(c) The provisions of this section shall not apply to peer-to-peer car sharing as defined in section nine hundred of the general business law and which is subject to the taxes set forth in article twenty-eight-D of this chapter.

§ 1166-b. Special supplemental tax on passenger car rentals outside of the metropolitan commuter transportation district. (a) In addition to the tax imposed under section eleven hundred sixty of this article and

in addition to any tax imposed under any other article of this chapter, there is hereby imposed and there shall be paid a tax at the rate of six percent upon the receipts from every rental of a passenger car that is not subject to the tax described in section eleven hundred sixty-six-a of this article, but which is a retail sale of such passenger car within the state.

(b) Except to the extent that a passenger car rental described in subdivision (a) of this section or in section eleven hundred sixty-six-a of this article, has already been subject to the tax imposed under such subdivision or section, and except as otherwise exempted under this article, there is hereby imposed on every person and there shall be paid a use tax for the use within the state of any passenger car rented by the user that is a purchase at retail of such passenger car, but not including any lease of a passenger car to which subdivision (i) of section eleven hundred eleven of this chapter applies. For purposes of this subdivision, the tax shall be at the rate of six percent of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this chapter, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(c) The provisions of this section shall not apply to peer-to-peer car sharing as defined in section nine hundred of the general business law and which is subject to the taxes set forth in article twenty-eight-D of this chapter.

§ 1167. Deposit and disposition of revenue. 1. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter, except that after reserving amounts in accordance with such section one hundred seventy-one-a of this chapter, the remainder shall be paid by the comptroller to the credit of the highway and bridge trust fund established by section eighty-nine-b of the state finance law, provided, however: (a) taxes, interest and penalties collected or received pursuant to section eleven hundred sixty-six-a of this article shall be deposited and disposed of

pursuant to subdivision two of this section; and (b) taxes, interest and penalties collected or received pursuant to section eleven hundred sixty-six-b of this article shall be paid to the credit of the public transportation systems operating assistance account established by section eighty-eight-a of the state finance law.

2. All taxes, interest, and penalties collected or received by the commissioner pursuant to section eleven hundred sixty-six-a of this article shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, in trust for the credit of the metropolitan transportation authority. An account may be established in one or more of such depositories. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds under this article. On or before the twelfth day of each month, after reserving such amount for such refunds and deducting such amounts for such costs, the commissioner shall certify to the comptroller the amount of all revenues received pursuant to this article during the prior month as a result of the tax imposed, including any interest and penalties thereon. The amount of revenues so certified over the prior three months in total shall be paid over by the fifteenth day of the last month of each calendar quarter from such account, without appropriation, into the corporate transportation account of the metropolitan transportation authority special assistance fund established by section twelve hundred seventy-a of the public authorities law, to be applied as provided in paragraph (e) of subdivision four of such section.

ARTICLE 28-B
**SIMPLIFIED SALES AND USE TAX
ADMINISTRATION**

- Section 1170. Short title.
1171. Definitions.
1172. Legislative finding.
1173. Authority to enter agreement.

- 1174. Relationship to state law.
- 1175. Agreement requirements.
- 1176. Cooperating sovereigns.
- 1177. Limited binding and beneficial effect.
- 1178. Seller and third party liability.

§ 1170. Short title. This article shall be known and may be cited as the "simplified sales and use tax administration act".

§ 1171. Definitions. As used in this article:

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(c) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(d) "Department" means the New York state department of taxation and finance.

(e) "Person" shall have the same meaning as ascribed to such term by subdivision (a) of section eleven hundred one of this chapter.

(f) "Sales tax" means the sales tax imposed pursuant to article twenty-eight of this chapter and pursuant to the authority of article twenty-nine of this chapter, to the extent covered by the streamlined sales and use tax agreement authorized and directed to be entered into by section eleven hundred seventy-three of this article.

(g) "Seller" means any person making sales, leases, or rentals of personal property or services.

(h) "State" means any state of the United States and the District of Columbia.

(i) "Use tax" means the compensating use tax imposed pursuant to article twenty-eight of this chapter and pursuant to the authority of article twenty-nine of this chapter, to the extent covered by the

streamlined sales and use tax agreement authorized and directed to be entered into by section eleven hundred seventy-three of this article.

§ 1172. Legislative finding. The legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all vendors to collect New York state's sales and use tax. The legislature further finds that New York state should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

§ 1173. Authority to enter agreement. (a) The department is authorized and directed to enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

(b) The department is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

(c) New York state shall be represented by four delegates, one of whom shall be appointed by the temporary president of the senate, one of whom shall be appointed by the speaker of the assembly, one of whom shall be appointed by the governor and one of whom shall be the commissioner or his or her designee. In the event of a disagreement between the four delegates on how the state of New York shall vote within such governing board, the vote shall be cast only in accord with the unanimous opinion of the delegate appointed by the temporary president of the senate, the delegate appointed by the speaker of the assembly and the delegate

appointed by the governor. Such delegates shall be authorized to represent New York state before the other states that are signatories to the agreement.

§ 1174. Relationship to state law. No provision of the agreement authorized by this article in whole or part invalidates or amends any provision of the law of New York state. Adoption of the agreement by New York state does not amend or modify any law of New York state. Implementation of any condition of the agreement in New York state, whether adopted before, at, or after membership of New York state in the agreement, shall be exclusively done by a separate act or acts of the legislature.

§ 1175. Agreement requirements. The department shall not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the following requirements:

(a) The agreement must set restrictions to limit over time the number of state rates.

(b) The agreement must establish uniform standards for the following:

(1) The sourcing of transactions to taxing jurisdictions.

(2) The administration of exempt sales.

(3) Sales and use tax returns and remittances.

(c) The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(d) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(f) The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting variances between the state and local tax bases.

(2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.

(3) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

(4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(g) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(h) The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(i) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(j) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the agreement.

§ 1176. Cooperating sovereigns. The agreement authorized by this article is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

§ 1177. Limited binding and beneficial effect. (a) The agreement authorized by this article binds and inures only to the benefit of New York state and the other member states. No person, other than a member

state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the laws of New York state and the other member states and not by the terms of the agreement.

(b) Consistent with subdivision (a) of this section, no person shall have any cause of action or defense under the agreement or by virtue of New York state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of New York state, or any political subdivision of New York state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of New York state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

*** § 1178. Seller and third party liability.** (a) (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

(2) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for

underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

* NB Not effective per letter by DOT received August 30, 2006

ARTICLE 28-C

SUPPLEMENTAL TAX ON VAPOR PRODUCTS

Section 1180. Definitions.

1181. Imposition of tax.

1182. Imposition of compensating use tax.

1183. Vapor products dealer registration and renewal.

1184. Administrative provisions.

1185. Criminal penalties.

1186. Deposit and disposition of revenue.

§ 1180. Definitions. For the purposes of the taxes imposed by this article, the following terms shall mean:

(a) "Vapor product" means any noncombustible liquid or gel, regardless of the presence of nicotine therein, that is manufactured in to a finished product for use in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vaping pen, hookah pen or other similar device. "Vapor product" shall not include any product approved by the United States food and drug administration as a drug or medical device, or manufactured and dispensed pursuant to title five-A of article thirty-three of the public health law.

(b) "Vapor products dealer" means a person licensed by the commissioner to sell vapor products in this state.

§ 1181. Imposition of tax. In addition to any other tax imposed by

this chapter or other law, there is hereby imposed a tax of twenty percent on receipts from the retail sale of vapor products sold in this state. The tax is imposed on the purchaser and collected by the vapor products dealer as defined in subdivision (b) of section eleven hundred eighty of this article, in trust for and on account of the state. The taxes imposed under this section shall not apply to adult-use cannabis products subject to tax under article twenty-C of this chapter.

§ 1182. Imposition of compensating use tax. (a) Except to the extent that vapor products have already been or will be subject to the tax imposed by section eleven hundred eighty-one of this article, or are otherwise exempt under this article, there is hereby imposed a use tax on every use within the state of vapor products: (1) purchased at retail; and (2) manufactured or processed by the user if items of the same kind are sold by him or her in the regular course of his or her business.

(b) For purposes of paragraph one of subdivision (a) of this section, the tax shall be at the rate of twenty percent of the consideration given or contracted to be given for such vapor product purchased at retail. For purposes of paragraph two of subdivision (a) of this section, the tax shall be at the rate of twenty percent of the price at which such items of the same kind of vapor product are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of such vapor product by the person that manufactured or processed such vapor product shall not be deemed a taxable use by him or her.

(c) The tax due pursuant to this section shall be paid and reported no later than twenty days after such use on a form prescribed by the commissioner.

§ 1183. Vapor products dealer registration and renewal. (a) Every person who intends to sell vapor products in this state must receive from the commissioner a certificate of registration prior to engaging in business. Such person must electronically submit a properly completed application for a certificate of registration for each location at which

vapor products will be sold in this state, on a form prescribed by the commissioner, and shall be accompanied by a non-refundable application fee of three hundred dollars.

(b) A vapor products dealer certificate of registration shall be valid for the calendar year for which it is issued unless earlier suspended or revoked. Upon the expiration of the term stated on the certificate of registration, such certificate shall be null and void. A certificate of registration shall not be assignable or transferable and shall be destroyed immediately upon the vapor products dealer ceasing to do business as specified in such certificate or in the event that such business never commenced.

(c) Every vapor product dealer shall publicly display a vapor products dealer certificate of registration in each place of business in this state where vapor products are sold at retail. A vapor products dealer who has no regular place of business shall publicly display such valid certificate on each of its carts, stands, trucks or other merchandising devices through which it sells vapor products.

(d) (1) The commissioner shall refuse to issue a certificate of registration to any applicant who does not possess a valid certificate of authority under section eleven hundred thirty-four of this chapter. In addition, the commissioner may refuse to issue a certificate of registration, or suspend, cancel or revoke a certificate of registration issued to any person who: (A) has a past-due liability as that term is defined in section one hundred seventy-one-v of this chapter; (B) has had a certificate of registration under this article or any license or registration provided for in this chapter revoked within one year from the date on which such application was filed; (C) has been convicted of a crime provided for in this chapter within one year from the date on which such application was filed; (D) willfully fails to file a report or return required by this article; (E) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required by this article which is false; (F) willfully fails to collect or truthfully account for or pay over any tax imposed by this article; or (G) whose place of business is at the same premises as that of a person whose vapor products dealer registration has been revoked and where such revocation is still in effect, unless the applicant or vapor products dealer provides the commissioner with adequate

documentation demonstrating that such applicant or vapor products dealer acquired the premises or business through an arm's length transaction as defined in paragraph (e) of subdivision one of section four hundred eighty-a of this chapter.

(2) In addition to the grounds provided in paragraph one of this subdivision, the commissioner shall refuse to issue a certificate of registration and shall cancel or suspend a certificate of registration as directed by an enforcement officer pursuant to article thirteen-F of the public health law. Notwithstanding any provision of law to the contrary, an applicant whose application for a certificate of registration is refused or a vapor products dealer whose registration is cancelled or suspended under this paragraph shall have no right to a hearing under this chapter and shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner with respect to such refusal, suspension or cancellation; provided, however, that nothing herein shall be construed to deny a vapor products dealer a hearing under article thirteen-F of the public health law or to prohibit vapor products dealers from commencing a court action or proceeding against an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law.

(e) If a vapor products dealer is suspended, cancelled or revoked and such vapor products dealer sells vapor products through more than one place of business in this state, the vapor products dealer's certificate of registration issued to that place of business, cart, stand, truck or other merchandising device, where such violation occurred, shall be suspended, revoked or cancelled. Provided, however, upon a vapor products dealer's third suspension, cancellation or revocation within a five-year period for any one or more businesses owned or operated by the vapor products dealer, such suspension, cancellation, or revocation of the vapor products dealer's certificate of registration shall apply to all places of business where he or she sells vapor products in this state.

(f) Every holder of a certificate of registration must notify the commissioner of changes to any of the information stated on the certificate or changes to any information contained in the application for the certificate of registration. Such notification must be made on or before the last day of the month in which a change occurs and must be

made electronically on a form prescribed by the commissioner.

(g) Every vapor products dealer who holds a certificate of registration under this article shall be required to reapply for a certificate of registration for the following calendar year on or before the twentieth day of September and such reapplication shall be subject to the same requirements and conditions, including grounds for refusal, as an initial registration under this article, including but not limited to the payment of the three hundred dollar application fee for each retail location.

(h) In addition to any other penalty imposed by this chapter, any vapor products dealer who violates the provisions of this section, (1) for a first violation is liable for a civil fine not less than five thousand dollars but not to exceed twenty-five thousand dollars and such certificate of registration may be suspended for a period of not more than six months; and (2) for a second or subsequent violation within three years following a prior violation of this section, is liable for a civil fine not less than ten thousand dollars but not to exceed thirty-five thousand dollars and such certificate of registration may be suspended for a period of up to thirty-six months; or (3) for a third violation within a period of five years, its vapor products certificate or certificates of registration issued to each place of business owned or operated by the vapor products dealer in this state, shall be revoked for a period of up to five years.

§ 1184. Administrative provisions. (a) Except as otherwise provided for in this article, the taxes imposed by this article shall be administered and collected in a like manner as and jointly with the taxes imposed by sections eleven hundred five and eleven hundred ten of this chapter. In addition, except as otherwise provided in this article, all of the provisions of article twenty-eight of this chapter (except sections eleven hundred seven, eleven hundred eight, eleven hundred nine, and eleven hundred forty-eight) relating to or applicable to the administration, collection and review of the taxes imposed by such sections eleven hundred five and eleven hundred ten, including, but not limited to, the provisions relating to definitions, returns, exemptions, penalties, tax secrecy, personal liability for the tax, and collection

of tax from the customer, shall apply to the taxes imposed by this article so far as such provisions can be made applicable to the taxes imposed by this article with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the taxes so imposed. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the taxes imposed by this article.

(b) Notwithstanding the provisions of subdivision (a) of this section, the exemptions provided in paragraph ten of subdivision (a) of section eleven hundred fifteen of this chapter, and the provisions of section eleven hundred sixteen, except those provided in paragraphs one, two, three and six of subdivision (a) of such section, shall not apply to the taxes imposed by this article.

(c) Notwithstanding the provisions of this section or section eleven hundred forty-six of this chapter, the commissioner may, in his or her discretion, permit the commissioner of health or his or her authorized representative to inspect any return related to the tax imposed by this article and may furnish to the commissioner of health any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of a liability under this article.

§ 1185. Criminal penalties. The criminal penalties in sections eighteen hundred one through eighteen hundred seven and eighteen hundred seventeen of this chapter shall apply to this article with the same force and effect as if the language of those provisions had been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the taxes imposed by this article.

§ 1186. Deposit and disposition of revenue. The taxes, interest, and penalties imposed by this article and collected or received by the commissioner shall be deposited daily with such responsible banks,

banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller in trust for the tobacco control and insurance initiatives pool established by section ninety-two-dd of the state finance law and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds under this article. Provided, however that the commissioner is authorized and directed to deduct from the amounts he or she receives from the registration fees under section eleven hundred eighty-three of this article, before deposit into the tobacco control and insurance initiatives pool, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs incurred to administer, collect and distribute the taxes imposed by this article.

ARTICLE 28-D

SPECIAL TAX ON PEER-TO-PEER CAR SHARING

Section 1190. Definitions.

1191. Imposition of state-wide peer-to-peer tax.

1192. Imposition of metropolitan commuter transportation district tax.

1193. Imposition of regional transportation tax.

1194. Collection of tax.

1195. Presumption.

1196. Administrative provisions.

1197. Deposit and disposition of revenue.

§ 1190. Definitions. Terms used in this article shall have the same meaning as in section nine hundred of the general business law unless expressly provided otherwise. For purposes of this article, the following terms shall have the following meanings:

(a) "Gross receipts paid by the shared vehicle driver" means all consideration paid or contracted to be paid by a shared vehicle driver for use of a shared vehicle, including optional charges and fees, except for separately stated charges for taxes and government-imposed fees and airport facility fees, imposed on the shared vehicle driver.

(b) "Peer-to-peer car sharing program administrator" shall mean the corporation, partnership, firm, institution, sole proprietorship or other entity or person that is responsible for operating, facilitating, or administering the means, digital or otherwise, by which a business platform facilitates a peer-to-peer car sharing program for financial consideration.

§ 1191. Imposition of state-wide peer-to-peer tax. (a) In addition to any tax imposed under any other article of this chapter, there is hereby imposed on every shared vehicle driver and there shall be paid a tax of three percent of the gross receipts paid by the shared vehicle driver for use of a shared vehicle when the transfer of possession of the shared vehicle to the shared vehicle driver occurs in this state.

(b) Except to the extent that the transfer of a shared vehicle described in subdivision (a) of this section has already been or will be subject to the tax imposed under such subdivision and except as otherwise exempted under this article, there is hereby imposed on every shared vehicle driver and there shall be paid a use tax for the use within this state of any shared vehicle by the shared vehicle driver. For purposes of this subdivision, the tax shall be at the rate of three percent of the gross receipts paid or contracted to be paid for such shared vehicle.

§ 1192. Imposition of metropolitan commuter transportation district tax. (a) In addition to the statewide tax imposed under section eleven hundred ninety-one of this article and in addition to any tax imposed under any other article of this chapter, there is hereby imposed on every shared vehicle driver and there shall be paid a metropolitan commuter transportation district tax of three percent of the gross receipts paid by the shared vehicle driver for the use of a shared

vehicle when the transfer of possession of the shared vehicle to the shared vehicle driver occurs in the metropolitan commuter transportation district as established by section twelve hundred sixty-two of the public authorities law.

(b) Except to the extent that the transfer of a shared vehicle described in subdivision (a) of this section, or section eleven hundred ninety-three of this article, has already been or will be subject to the tax imposed under such subdivision or section and except as otherwise exempted under this article, there is hereby imposed on every shared vehicle driver and there shall be paid a use tax for the use within the metropolitan commuter transportation district as established by section twelve hundred sixty-two of the public authorities law of any shared vehicle by the shared vehicle driver. For purposes of this subdivision, the tax shall be at the rate of three percent of the gross receipts paid or contracted to be paid for such shared vehicle.

§ 1193. Imposition of regional transportation tax. (a) In addition to the statewide tax imposed under section eleven hundred ninety-one of this article and in addition to any tax imposed under any other article of this chapter, there is hereby imposed on every shared vehicle driver and there shall be paid a regional transportation tax of three percent of the gross receipts paid by the shared vehicle driver for the use of a shared vehicle when the transfer of possession of the shared vehicle to the shared vehicle driver occurs anywhere in this state outside of the metropolitan transportation district as established by section twelve hundred sixty-two of the public authorities law.

(b) Except to the extent that the transfer of a shared vehicle described in subdivision (a) of this section, or section eleven hundred ninety-two of this article, has already been or will be subject to the tax imposed under such subdivision or section and except as otherwise exempted under this article, there is hereby imposed on every shared vehicle driver and there shall be paid a use tax for the use in the state outside the metropolitan commuter transportation district as established by section twelve hundred sixty-two of the public authorities law of any shared vehicle by the shared vehicle driver. For purposes of this subdivision, the tax shall be at the rate of three

percent of the gross receipts paid or contracted to be paid for such shared vehicle.

§ 1194. Collection of tax. The peer-to-peer car sharing program administrator shall collect the tax from the shared vehicle driver when collecting the gross receipts to which it applies. The tax shall be paid to the peer-to-peer car sharing program administrator as trustee for and on account of the state.

§ 1195. Presumption. For the purpose of the proper administration of this article and to prevent evasion of the tax imposed by this article, it shall be presumed that every transfer of possession of a shared vehicle to a shared vehicle driver anywhere in this state is subject to the tax under this article. This presumption shall prevail until the contrary is established.

§ 1196. Administrative provisions. (a) Except as otherwise provided for in this article, the taxes imposed by this article shall be administered and collected in a like manner as and jointly with the taxes imposed by sections eleven hundred five and eleven hundred ten of this chapter. In addition, except as otherwise provided in this article, all of the provisions of article twenty-eight of this chapter (except sections eleven hundred seven, eleven hundred eight, eleven hundred nine, and eleven hundred forty-eight) relating to or applicable to the administration, collection and review of the taxes imposed by such sections eleven hundred five and eleven hundred ten, including, but not limited to, the provisions relating to definitions, returns, exemptions, penalties, tax secrecy, personal liability for the tax, and collection of tax from the customer, shall apply to the taxes imposed by this article so far as such provisions can be made applicable to the taxes imposed by this article with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the taxes so imposed. Such provisions shall apply with the same force and effect as if the language of those provisions had

been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the taxes imposed by this article.

(b) The tax imposed by this article is in lieu of and replaces any tax as may be imposed under sections eleven hundred sixty, eleven hundred sixty-six-a, and eleven hundred sixty-six-b of this chapter.

§ 1197. Deposit and disposition of revenue. (a) All taxes, fees, interest and penalties collected or received by the commissioner under section eleven hundred ninety-one of this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

(b) All taxes, fees, interest and penalties collected or received by the commissioner under section eleven hundred ninety-two of this article shall be deposited and disposed into the corporate transportation account of the metropolitan transportation authority special assistance fund established by section twelve hundred seventy-a of the public authorities law, to be applied as provided in paragraph (e) of subdivision four of such section.

(c) All taxes, fees, interest and penalties collected or received by the commissioner under section eleven hundred ninety-three of this article shall be deposited and disposed into the public transportation systems operating assistance account established by section eighty-eight-a of the state finance law.

ARTICLE 29

TAXES AUTHORIZED FOR CITIES, COUNTIES AND SCHOOL DISTRICTS

PART I--AUTHORITY TO IMPOSE TAXES

SUBPART A--TAXES ADMINISTERED BY CITIES, COUNTIES AND SCHOOL DISTRICTS

- Section 1200. Authorization to impose occupancy tax on short term rental units.
1201. Taxes administered by cities of one million or more.
- 1201-a. Credits against taxes administered by cities of one

- million or more.
- 1201-b. Additional credits against taxes administered by cities of one million or more.
- 1201-c. Credits against taxes administered by cities of one million or more.
- 1201-d. Dedication of taxes authorized for cities and counties.
- 1201-e. Credit.
- 1202. Taxes administered by counties not wholly within a city.
- 1202-a. Hotel or motel taxes in Onondaga county.
- 1202-aa. Occupancy tax in the city of New Rochelle.
- 1202-aa*2. Occupancy tax in the city of White Plains.
- 1202-aa*3. Hotel or motel taxes in Schoharie county.
- 1202-aa*4. Hotel and motel tax in Washington county.
- 1202-aa*5. Hotel or motel taxes in Orange county.
- 1202-aa*6. Hotel or motel taxes in the city of Peekskill.
- 1202-aa*7. Hotel or motel taxes in Tioga county.
- 1202-aa-1. Hotel or motel taxes in the town of Montgomery.
- 1202-aaa. Occupancy tax in the city of Rye.
- 1202-b. Hotel or motel taxes in Broome county.
- 1202-bb. Occupancy tax in the Village of Rye Brook.
- 1202-bbb. Occupancy tax in the of village of Catskill.
- 1202-c. Hotel or motel taxes in Jefferson county.
- 1202-cc. Hotel or motel taxes in Franklin county.
- 1202-cc*2. Hotel or motel taxes in Delaware county.
- 1202-d. Hotel or motel taxes in Oneida county.
- 1202-dd. Hotel or motel taxes in the city of Hudson.
- 1202-dd*2. Hotel or motel taxes in Fulton county.
- 1202-dd*3. Hotel or motel taxes in the town of Greenburgh and specified villages therein and in the village of Sleepy Hollow.
- 1202-dd*4. Occupancy tax in the village of Mamaroneck.
- 1202-dd*5. Occupancy tax in the village of Port Chester.
- 1202-dd-1. Occupancy tax in the village of Harrison.
- 1202-dd-2. Hotel or motel taxes in the town of Fishkill and in the village of Fishkill.

1202-e.	Hotel or motel taxes in Schenectady county.
1202-ee.	Hotel or motel taxes in the town of Woodbury.
1202-eee.	Hotel or motel taxes in the village of Woodbury.
1202-f.	Hotel or motel taxes in Tompkins county.
1202-ff.	Hotel or motel taxes in Chenango county.
1202-ff*2.	Occupancy tax in the city of Port Jervis.
1202-g.	Hotel or motel taxes in Cortland county.
1202-g*2.	Hotel or motel taxes in Steuben county.
1202-g*3.	Hotel or motel taxes in the county of Westchester.
1202-g-1.	Hotel or motel taxes in Saratoga county and the city of Saratoga Springs.
1202-gg.	Hotel or motel taxes in the city of Ithaca.
1202-gg*2.	Hotel or motel taxes in the town of Mount Pleasant.
1202-gg*3.	Hotel or motel taxes in the town of Wallkill.
1202-gg-1.	Hotel or motel taxes in the town of Cornwall.
1202-gg-2.	Hotel or motel taxes in the town of Newburgh.
1202-h.	Hotel or motel taxes in Chemung county.
1202-h*2.	Hotel or motel taxes in the county of Oswego.
1202-hh.	Hotel or motel taxes in the village of Cold Spring.
1202-hh-1.	Hotel or motel taxes in the town of Chester.
1202-hh-2.	Hotel or motel taxes in the village of Cold Spring.
1202-hh-2*2.	Occupancy tax in the village of Briarcliff Manor.
1202-hh-3.	Hotel or motel taxes in the city of Newburgh.
1202-hhh.	Occupancy tax in the town of Skaneateles.
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1202-ii*2.	Hotel or motel taxes in the village of Goshen.
1202-iii.	Hotel or motel taxes in the town of Highlands.
1202-j.	Hotel or motel taxes in Otsego county.
1202-j*2.	Hotel and motel taxes in Sullivan county.
1202-j*3.	Hotel or motel taxes in Chautauqua county.
1202-jj.	Hotel or motel taxes in the town of New Windsor.
1202-jj*2.	Hotel or motel taxes in the town of Clarkstown.
1202-jj*3.	Hotel or motel taxes in Columbia county.
1202-jj*4.	Hotel or motel taxes in the city of Binghamton.
1202-jj*5.	Hotel or motel taxes in the village of Greenwood

Lake.

- 1202-jj*6. Hotel or motel taxes in the village of South Blooming Grove.
- 1202-jj*7. Hotel or motel taxes in the town of Wawayanda.
- 1202-jj*8. Hotel or motel taxes in the city of Cortland.
- 1202-jj*9. Hotel or motel taxes in the town of Ramapo.
- 1202-jj*10. Occupancy tax in the town of Ossining.
- 1202-jj*11. Occupancy tax in the of village of Coxsackie.
- 1202-k. Hotel or motel taxes in Montgomery county.
- 1202-k*2. Hotel or motel taxes in the county of Rockland.
- 1202-kk. Hotel or motel taxes in the city of Buffalo.
- 1202-kk*2. Hotel or motel taxes in the village of Chester.
- 1202-kk*3. Occupancy tax in the town of Dickinson.
- 1202-kk*4. Occupancy tax in the city of Oneonta.
- 1202-kkk. Hotel or motel taxes in the city of Mount Vernon.
- 1202-kkk*2. Occupancy tax in the town of Cheektowaga.
- 1202-l. Hotel and motel taxes in Ulster county.
- 1202-l*2. Hotel or motel taxes in the city of Canandaigua.
- 1202-l*3. Hotel or motel taxes in Niagara Falls.
- 1202-ll. Occupancy tax in the town of Clinton.
- 1202-ll*2. Occupancy tax in the city of Kingston.
- 1202-ll*3. Occupancy tax in the town of Amherst.
- 1202-ll*4. Hotel or motel taxes in the town of Monroe.
- 1202-ll*5. Hotel or motel taxes in the town of Gardiner.
- 1202-ll*6. Hotel, motel or beach club taxes in the village of Atlantic Beach.
- 1202-ll*7. Occupancy tax in the town of Rhinebeck.
- 1202-ll*8. Hotel or motel taxes in the county of St. Lawrence.
- 1202-m. Hotel or motel taxes in Livingston county.
- 1202-mm. Hotel or motel taxes in the city of Beacon.
- 1202-n. Hotel or motel taxes in Rensselaer county.
- 1202-nn. Hotel or motel taxes in the city of Poughkeepsie.
- 1202-nnn. Occupancy tax in the town of Cortlandt.
- 1202-nnn*2. Hotel or motel taxes in the town of Poughkeepsie.
- 1202-nnn*3. Occupancy tax in the city of Syracuse.
- 1202-o. Hotel and motel taxes in Suffolk county.
- 1202-o*2. Hotel or motel taxes in the city of Lockport,

Niagara county.

1202-o*3.	Hotel or motel taxes in Seneca county.
1202-oo.	Occupancy tax in the city of Utica.
1202-p.	Hotel or motel taxes in Madison county.
1202-pp.	Occupancy tax in the city of Rome.
1202-q.	Hotel and motel taxes in Nassau county.
1202-q*2.	Hotel or motel taxes in Cayuga county.
1202-r.	Hotel or motel taxes in Genesee county.
1202-rr.	Hotel or motel taxes in the city of Batavia.
1202-rr*2.	Occupancy tax in the town of Lancaster.
1202-s.	Hotel or motel taxes in Essex county.
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1202-uu.	Hotel or motel taxes in the city of Olean.
1202-uuu.	Hotel or motel taxes in the village of Ellicottville.
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PART I--AUTHORITY TO IMPOSE TAXES

SUBPART A--TAXES ADMINISTERED BY CITIES, COUNTIES AND SCHOOL DISTRICTS

§ 1200. Authorization to impose occupancy tax on short term rental units. Where a county has not exercised the option pursuant to paragraph (b) of subdivision one of section four hundred forty-seven-c of article twelve-d of the real property law to enact a local law stating that such county opts not to establish a registration system for short-term rental units, as such term is defined in subdivision two of section four hundred forty-seven-a of article twelve-d of the real property law, such county or any local government in such county that is authorized and empowered to impose a tax on hotel and motel occupancy pursuant to this subpart is hereby authorized and empowered to adopt and amend local laws imposing such tax to include a tax on occupancy of a short term rental unit, as such term is defined in paragraph nine of subdivision (c) of section eleven hundred one of this chapter.

§ 1201. Taxes administered by cities of one million or more.

Notwithstanding any other provisions of law to the contrary, but subject to the applicable limitations and exemptions in part II of this article, any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city any or all of the types of taxes set forth in the following subdivisions of this section, such taxes to be administered and collected by the fiscal officers of such city in the manner provided for in subpart A of part III of this article:

(a) Taxes on the privilege of doing any business, engaging in any trade, calling, occupation or profession; owning, holding or occupying any property; possessing or exercising any franchise or franchises; or on the gross receipts from sales to persons within such city; except that no tax may be imposed pursuant to this subdivision on persons as to whom authority to tax is granted by article two-b of the general city law. The rate of the taxes authorized in this subdivision shall not be in excess of one and seventeen one hundredths times the rate fixed for the corresponding taxes by local law fifty-one of the city of New York for the year nineteen hundred forty-one, and not in excess of two and thirty-five one hundredths times the rate fixed for the corresponding tax by local law forty-nine of the city of New York for the year nineteen hundred forty-one, except that as to persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, the rate shall not be in excess of three and fifty-two one hundredths percent of gross income and except that as to persons engaged in the business of operating omnibuses with a carrying capacity of more than seven persons, whether or not such persons are subject to the supervision of the state department of public service, the rate shall not be in excess of one and seventeen one hundredths percent of gross income or gross operating income, as the case may be.

Notwithstanding the limitations as to rate provided above, for the years nineteen hundred seventy-three and those following, such city may

impose, by local law, a surtax of forty per centum of the percentage of tax in effect pursuant to this subdivision in such city for the year nineteen hundred seventy-two.

(b) (i) Taxes on each deed, other instrument or transaction (other than a deed or instrument given solely as security or a transaction the sole purpose of which is to secure an obligation or indebtedness) by which any real property or any economic interest therein is conveyed or transferred, measured by the consideration or value of the interest or property conveyed or transferred, (1) at a rate not to exceed one-half of one percent of such consideration or value with respect to conveyances made before July first, nineteen hundred seventy-one, or made in performance of a contract therefor executed before such date, (2) at a rate not to exceed one percent of such consideration or value with respect to (A) all conveyances made on or after July first, nineteen hundred seventy-one and before February first, nineteen hundred eighty-two, or made in performance of a contract therefor executed during such period, (B) conveyances or transfers made on or after February first, nineteen hundred eighty-two of one, two or three-family houses, individual cooperative apartments and individual residential condominium units, or interests therein, and (C) conveyances or transfers made on or after February first, nineteen hundred eighty-two (other than grants, assignments or surrenders of leasehold interests in real property) where the consideration or value is less than five hundred thousand dollars, (3) at a rate not to exceed two percent of such consideration or value with respect to all other conveyances or transfers made on or after February first, nineteen hundred eighty-two (other than grants, assignments or surrenders of leasehold interests in real property) other than those conveyances or transfers specified in subparagraphs four, five and six of this paragraph, (4) at a rate not to exceed one and four hundred twenty-five thousandths of one percent of such consideration or value where such consideration or value is less than five hundred thousand dollars with respect to all conveyances or transfers other than for conveyances or transfers of one, two or three family houses, individual cooperative apartments, and individual residential condominium units, or interests therein (other than grants, assignment or surrenders of leasehold interests in real property), made on or after August first, nineteen hundred eighty-nine, (5) at a rate

not to exceed one and four hundred twenty-five thousandths of one percent of such consideration or value where such consideration or value is more than five hundred thousand dollars with respect to conveyances or transfers of one, two or three family houses, individual cooperative apartments, and individual residential condominium units, or interests therein (other than grants, assignments or surrenders of leasehold interests in real property), made on or after August first, nineteen hundred eighty-nine, and (6) at a rate not to exceed two and six hundred twenty-five one thousandths of one percent of such consideration or value where such consideration or value is greater than five hundred thousand dollars with respect to all conveyances or transfers other than for conveyances or transfers of one, two or three family houses, individual cooperative apartments, and individual residential condominium units, or interests therein (other than grants, assignment or surrenders of leasehold interests in real property), made on or after August first, nineteen hundred eighty-nine. Provided, however, that any such city may allow deductions, in determining the portion of any tax authorized hereby the proceeds of which are payable to the New York city transit authority as hereinafter provided, for any continuing liens on such interest or property where such interest or property is a one, two or three-family house, an individual cooperative apartment or an individual residential condominium unit or where the consideration for or value of the interest or property conveyed or transferred is less than five hundred thousand dollars, and may also allow an exemption not in excess of twenty-five thousand dollars on the consideration or value of the interest or property conveyed and provided, further, that such taxes shall not apply if the contract for any such conveyance was made prior to May first, nineteen hundred fifty-nine. Anything to the contrary notwithstanding, where the tax authorized hereby is imposed on the consideration or value without any deduction for continuing liens, the portion of the consideration or value ascribable to such liens shall not be taxed at a rate in excess of one percent prior to July first, nineteen hundred eighty-two, in excess of two percent on and after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine, or in excess of two and six hundred twenty-five thousandths of one percent on and after August first, nineteen hundred eighty-nine, except that where the interest or property is a one, two or

three-family house, an individual cooperative apartment or an individual residential condominium unit or where the consideration for a value of the interest or property conveyed or transferred is less than five hundred thousand dollars the rate on and after July first, nineteen hundred eighty-two shall not be in excess of one percent. The amount of any pre-existing liens on such property or interest which continue thereon after the conveyance or transfer shall be deemed to be part of the consideration or value for purposes of measuring the tax without regard to whether or not payment of the liens or of the underlying debt is assumed by the grantee or transferee. The tax authorized hereby may also be imposed (A) prior to July first, nineteen hundred eighty-two, at a rate not to exceed one percent, on the granting, assignment or surrender of a leasehold interest in real property, other than a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other, where the consideration for or value of such grant, assignment or surrender is five hundred thousand dollars or more, (B) on and after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine, at a rate not to exceed two percent, on the granting, assignment or surrender of a leasehold interest in real property, except that in the case of a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other, or where the consideration for or value of such grant, assignment or surrender is less than five hundred thousand dollars, the rate shall not exceed one percent and (C) on and after August first, nineteen hundred eighty-nine, at a rate not to exceed two and six hundred twenty-five thousandths of one percent, on the granting, assignment or surrender of a leasehold interest in real property, except that in the case of a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other where the consideration for or value of such grant, assignment or surrender is less than five hundred thousand dollars, the rate shall not exceed one percent, or in the case of a

leasehold interest in a one, two or three family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other where the consideration for or value of such grant, assignment or surrender is greater than five hundred thousand dollars, the rate shall not exceed one and four hundred twenty-five thousandths of one percent, or where the consideration for or value of any other grant, assignment or surrender is less than five hundred thousand dollars, the rate shall not exceed one and four hundred twenty-five thousandths of one percent; provided, however, that for purposes of a tax on the granting of a leasehold interest in real property, the amount subject to tax shall be only such amount as is not considered rent for purposes of the tax authorized to be imposed on the occupancy of commercial premises by chapter two hundred fifty-seven of the laws of nineteen hundred sixty-three, as amended, and imposed by a city having a population of one million or more pursuant thereto. In the case of any conveyance or transfer of real property or any economic interest therein in complete or partial liquidation of a corporation, partnership, association, trust or other entity, the tax shall be measured by the consideration for such conveyance or transfer or the value of the real property or interest therein, whichever is greater. Such taxes may be imposed on any conveyance or transfer of real property or interest therein where the real property is located in such city regardless of where transactions, negotiations, transfers of deeds or other actions with regard to the transfer or conveyance take place, subject only to the restrictions contained in section twelve hundred thirty. The payment of, and the filing of a return relating to, any such taxes may be required as a condition precedent (1) to the recording or filing of a deed, lease, assignment or surrender of lease or other instrument, (2) to the commencement of any action or proceeding in any court of this state in which any conveyance, transfer or lease described herein is in issue, directly or indirectly, or (3) to the receipt in evidence of such deed, lease, assignment or surrender of lease or other instrument in any such court. In each instance where the tax rate imposed pursuant to this subdivision is two percent, fifty percent of the total amount of such tax, including fifty percent of any interest or penalties thereon, shall be set aside in a special account by the commissioner of finance of such

city, provided, however, that where the consideration for or value of property or interest conveyed or transferred includes the amount of any nondeductible mortgage, lien or other encumbrance which existed before the conveyance or transfer and remains thereon after such conveyance or transfer, (A) prior to July first, nineteen hundred eighty-two the entire amount of tax imposed at a rate not in excess of one percent on the portion of the consideration or value ascribable to such nondeductible mortgage, lien or other encumbrance, including any interest or penalties thereon, and fifty percent of the tax on the balance of the consideration or value, including fifty percent of any interest or penalties thereon, shall be set aside in such special account, and (B) on and after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine, fifty percent of the amount of tax imposed at a rate in excess of one percent but not in excess of two percent on the portion of the consideration or value ascribable to such nondeductible mortgage, lien or other encumbrance, including fifty percent of any interest or penalties thereon, and fifty percent of the tax on the balance of the consideration or value, including fifty percent of any interest or penalties thereon, shall be set aside in such special account. On and after August first, nineteen hundred eighty-nine, in each instance where the tax rate imposed pursuant to this subdivision is in excess of two percent, the portion of the tax, and any interest or penalty thereon, to be set aside in such special account shall be an amount equal to one percent of the total consideration for or value of the real property or economic interest therein conveyed or transferred, plus any interest or penalty attributable to such portion of the tax. There shall also be set aside in such special account prior to July first, nineteen hundred eighty-two the total amount of taxes imposed on grants, assignments or surrenders of leasehold interests in real property, including any interest or penalties thereon; on and after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine, there shall be set aside in such special account fifty percent of the amount of taxes imposed on grants, assignments or surrenders of leasehold interests in real property, other than a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more

families living independently of each other, or where the consideration for or value of such grant, assignment or surrender is less than five hundred thousand dollars, including fifty percent of any interest or penalties thereon. On and after August first, nineteen hundred eighty-nine, there shall be set aside in such special account, in each instance where the rate of tax on grants, assignments or surrenders of leasehold interests in real property is two percent or more, an amount equal to one percent of the consideration for or value of the leasehold interest granted, assigned or surrendered, plus any interest or penalty attributable to such portion of the tax. Notwithstanding anything in this paragraph (i) to the contrary, in each instance where the tax rate imposed pursuant to paragraph (xi) of this subdivision is in excess of one percent, the portion of tax, and any interest or penalty thereon, to be set aside in such special account shall be an amount equal to one-half of one percent of the total consideration for or value of the real property or economic interest therein conveyed or transferred, plus any interest or penalty attributable to such portion of the tax, and there shall be set aside in such special account, in each instance where the rate of tax imposed under paragraph (xi) of this subdivision on grants, assignments or surrenders of leasehold interests in real property is in excess of one percent, an amount equal to one-half of one percent of the consideration for or value of the leasehold interest granted, assigned or surrendered, plus any interest or penalty attributable to such portion of the tax. Moneys in such account shall be used for payment by such commissioner to the state comptroller for deposit in the urban mass transit operating assistance account of the mass transportation operating assistance fund of any amount of insufficiency certified by the state comptroller pursuant to the provisions of subdivision six of section eighty-eight-a of the state finance law, and, on the fifteenth day of each month such commissioner shall transmit all funds in such account on the last day of the preceding month, except the amount required for the payment of any amount of insufficiency certified by the state comptroller and such amount as he deems necessary for refunds and such other amounts necessary to finance the New York city transportation disabled committee and the New York city paratransit system as established by section fifteen-b of the transportation law, provided, however, that such

amounts shall not exceed six percent of the total funds in the account but in no event be less than one hundred seventy-five thousand dollars beginning April first, nineteen hundred eighty-six, and further that beginning November fifteenth, nineteen hundred eighty-four and during the entire period prior to operation of such system, the total of such amounts shall not exceed three hundred seventy-five thousand dollars for the administrative expenses of such committee and fifty thousand dollars for the expenses of the agency designated pursuant to paragraph b of subdivision five of such section, and other amounts necessary to finance the operating needs of the private bus companies franchised by the city of New York and eligible to receive state operating assistance under section eighteen-b of the transportation law, provided, however, that such amounts shall not exceed four percent of the total funds in the account, to the New York city transit authority for mass transit within the city.

(ii) For purposes of this subdivision, an "economic interest" in real property shall mean (1) the ownership of shares of stock in a corporation which owns real property, (2) the ownership of an interest or interests in a partnership, association or other entity which owns real property, and (3) the ownership of a beneficial interest or interests in a trust which owns real property.

(iii) For purposes of this subdivision, the terms "transferred" or "transfer," when used in relation to an economic interest in real property, shall include the transfer or transfers of shares of stock in a corporation, interest or interests in a partnership, association or other entity, or beneficial interest or interests in a trust, whether made by one or several persons, or in one or several related transactions, which shares of stock or interest or interests constitute a controlling interest in such corporation, partnership, association, trust or other entity.

(iv) "Controlling interest" for purposes of this subdivision shall mean: (1) in the case of a corporation, fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the fair market value of all classes of stock of such corporation; and (2) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership,

association, trust or other entity.

(v) Notwithstanding the definition of "controlling interest" contained in paragraph (iv) or any provision to the contrary contained in paragraph (iii) of this subdivision, in the case of any transfer of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold, the tax authorized by this subdivision shall apply to (1) the original transfer of such shares of stock by the cooperative corporation or cooperative plan sponsor, and (2) any subsequent transfer of such shares of stock by the owner thereof. Notwithstanding any provisions of this subdivision to the contrary, in the case of a transfer described in clause two of this paragraph which relates to an individual residential unit, the consideration for such transfer shall not include any portion of the unpaid principal of any mortgage on the real property of the cooperative housing corporation. In determining the tax on a transfer described in clause (1) of this paragraph, a credit shall be allowed for a proportionate part of the amount of any tax imposed pursuant to the authority of this subdivision and paid upon the conveyance to the cooperative housing corporation of the land and building or buildings comprising the cooperative dwelling or dwellings. Such proportionate part shall be the amount determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a fraction, the numerator of which shall be the number of shares of stock transferred in a transaction described in clause (1) and the denominator of which shall be the total number of outstanding shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax on a transfer described in clause (1) below zero, nor shall any such credit be allowed for any tax paid more than twenty-four months prior to the date on which occurs the first in a series of transfers of shares of stock in an offering of cooperative housing corporation shares described in clause (1). For purposes of this subdivision, the term "cooperative housing corporation" shall not include a housing company organized and operating pursuant to the provisions of article two, four, five, or eleven of the private housing finance law.

(vi) In the case of a transfer of an economic interest in any entity that owns assets in addition to real property or interest therein, the

consideration subject to tax shall be deemed equal to the fair market value of the real property or interest therein apportioned based on the percentage of the ownership interest in the entity transferred.

(vii) Any local law enacted pursuant to this subdivision may provide for such credits as are required to avoid multiple taxation.

(viii) Any city which has imposed the tax authorized by this subdivision prior to its amendment by a chapter of the laws of nineteen hundred eighty-one may continue to impose such tax without regard to the amendments made by such chapter, or may amend the local law imposing such tax to incorporate therein the provisions authorized by this subdivision as amended by such chapter of the laws of nineteen hundred eighty-one. If such city amends such local law to include therein the additional provisions authorized by such chapter of the laws of nineteen hundred eighty-one, the provisions so added shall not apply to any transfer made pursuant to a written contract entered into prior to the effective date of such chapter of the laws of nineteen hundred eighty-one.

(ix) Notwithstanding the definition of "controlling interest" contained in paragraph (iv) or anything to the contrary contained in paragraph (iii) of this subdivision, in the case of a corporation (other than a cooperative housing corporation), partnership, association, trust or other entity formed for the purpose of cooperative ownership of real property, the tax authorized by this subdivision shall apply to each transfer of: shares of stock in such corporation, interest in such partnership, association or other entity or beneficial interest in such trust, in connection with the grant or transfer of a proprietary leasehold. Notwithstanding any provisions of this subdivision to the contrary, in the case of a transfer described in this paragraph which relates to an individual residential unit (other than the original transfer of such a unit by the cooperative entity or cooperative plan sponsor), the consideration for such transfer shall not include any portion of the unpaid principal of any mortgage on the real property of such corporation, partnership, association, trust or other entity.

(x) Notwithstanding any other provision of law to the contrary, all revenues resulting from the imposition of the tax authorized by paragraph (ix) of this subdivision shall be credited to and deposited in the general fund of the city imposing such tax, but no part of such

revenues may be expended unless appropriated in the annual budget of such city.

(xi) Notwithstanding anything contained in this subdivision, the tax imposed under paragraphs (i), (v) and (ix) of this subdivision on any deed or other instrument or transaction conveying or transferring real property or an economic interest therein, that qualifies as a real estate investment trust transfer, as defined below, shall be imposed at a rate equal to fifty percent of the otherwise applicable rate. For purposes of this paragraph (xi), a real estate investment trust transfer shall mean (1) any deed or other instrument or transaction conveying or transferring real property or an economic interest therein to a real estate investment trust as defined in section 856 of the internal revenue code (a "REIT") or to a partnership or corporation in which a REIT owns a controlling interest immediately following the transaction; and

(2) any issuance or transfer of an interest in a REIT, or in a partnership or corporation in which a REIT owns a controlling interest immediately following the issuance or transfer, in connection with a transaction described in subparagraph one of this paragraph.

Notwithstanding the foregoing, a transaction described in the preceding sentence shall not constitute a real estate investment trust transfer unless (A) it occurs in connection with the initial formation of the REIT and the conditions described in subparagraphs three and four of this paragraph are satisfied, or (B) in the case of any real estate investment trust transfer occurring on or after July thirteenth, nineteen hundred ninety-six and before September first, two thousand twenty-nine, the transaction is described in subparagraph five of this paragraph in which case the provisions of such subparagraph shall apply.

(3) The value of the ownership interests in the REIT, or in a partnership or corporation in which the REIT owns a controlling interest, received by the grantor as consideration for such conveyance or transfer must be equal to an amount not less than forty percent of the value of the equity interest in the real property or economic interest therein conveyed or transferred by the grantor to the grantee and such ownership interests must be retained by the grantor or owners of the grantor for a period of not less than two years following the date of such conveyance or transfer; provided, however, that in the case

of the death of the grantor or an owner of the grantor within such two year period, this two year retention requirement shall be deemed to be satisfied notwithstanding any conveyance or transfer of such ownership interests held by such individual as a result of such death. The value of the equity interest in such real property or economic interest therein shall be computed by subtracting from the consideration for the conveyance or transfer of the real property or economic interest therein the unpaid balance of any loans secured by mortgages or other encumbrances which are liens on the real property or economic interest therein immediately before the conveyance or transfer. For purposes of this computation, in the case of a conveyance or transfer of real property other than a conveyance or transfer of an economic interest in real property, the amount of the unpaid balance of any loans secured by mortgages or other encumbrances to be subtracted from consideration is determined by multiplying the total unpaid balance of any loans secured by mortgages or other encumbrances on the real property by the percentage of the ownership interest in the real property being conveyed or transferred to the grantee. In the case of a transfer of an economic interest in real property, such amount to be subtracted is equal to the sum of the following amounts: (I) a reasonable apportionment to the interests in real property owned by the entity of the amount of any loans secured by encumbrances on the ownership interests in the entity which are being conveyed or transferred and (II) the amount of any loans secured by mortgages or other encumbrances on the real property of the entity multiplied by the percentage interest in the entity which is being conveyed or transferred. Provided, however that, for purposes of the computation made pursuant to this subparagraph three, any mortgages or other encumbrances on the real property or economic interest therein which are created in contemplation of the initial formation of the REIT or in contemplation of the conveyance or transfer of such real property or economic interest therein to the REIT or to a partnership or corporation in which the REIT owns a controlling interest immediately following the conveyance or transfer shall not be considered.

(4) Seventy-five percent or more of the cash proceeds received by such REIT from the sale of ownership interests in such REIT upon its initial formation must be used: (I) to make payments on loans secured by any interest in real property (including an ownership interest in an entity

owning real property) which is owned directly or indirectly by such REIT; (II) to pay for capital improvements to real property or any interest therein owned directly or indirectly by such REIT; (III) to pay brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease incurred in connection with the creation of a leasehold or sublease pertaining to real property or any interest therein owned directly or indirectly by such REIT; (IV) to acquire any interest in real property (including an ownership interest in any entity owning real property), apart from any acquisition to which a reduced rate of tax is applicable pursuant to this paragraph (without regard to this subparagraph); or (V) for reserves established for any of the purposes described in clause I, II or III of this subparagraph. For purposes of this subparagraph, the term real property shall include real property wherever located.

(5) If a transaction otherwise described in subparagraph two of this paragraph occurs other than in connection with the initial formation of a REIT, the condition set forth in subparagraph four of this paragraph shall be disregarded and such transaction shall constitute a "real estate investment trust transfer" if the condition set forth in subparagraph three of this paragraph would be satisfied if "fifty percent" is substituted for "forty percent" therein.

For purposes of determining the consideration for a real estate investment trust transfer taxable under this paragraph (xi), the value of the real property or interest therein shall be equal to the estimated market value as determined by the commissioner of finance of the city of New York for real property tax purposes as reflected on the most recent notice of assessment issued by such commissioner, or such other value as the taxpayer may establish to the satisfaction of such commissioner. This paragraph (xi) shall only apply to real estate investment trust transfers occurring on or after the effective date of this paragraph.

(xii) Notwithstanding any other provision of this subdivision, in determining the tax authorized by this subdivision with respect to a deed, instrument or transaction conveying or transferring a one, two or three-family house, an individual residential condominium unit, an individual residential cooperative apartment, or an interest therein, the consideration for such conveyance or transfer shall exclude, to the

extent otherwise included therein, the amount of any mortgage or other lien or encumbrance on the real property or interest therein that existed before the delivery of the deed or the transfer and remains thereon after the date of delivery of the deed or the transfer, other than any mortgage, lien or encumbrance placed on the property or interest in connection with, or in anticipation of, the conveyance or transfer, or by reason of deferred payments of the purchase price whether represented by notes or otherwise. Provided, however, that this paragraph shall not apply to a conveyance or transfer (1) to a mortgagee, lienor or encumbrancer, regardless of whether the grantor or transferor is or was personally liable for the indebtedness secured by the mortgage, lien or encumbrance or whether the mortgage, lien or encumbrance is canceled of record, or (2) which qualifies as a "real estate investment trust transfer" as defined in paragraph (xi) of this subdivision.

(c) Privilege taxes on amusement devices operated by coins, tokens or currency (either generally or upon selected types or classes of such devices), including, but not limited to, juke box, music, skill game, digger, pool or billiard tables, booths providing live entertainment and moving picture and video devices, at a rate not to exceed twenty-five dollars per annum for each such device.

(d) Taxes on the privilege of selling liquor, wine or beer at retail for on or off premises consumption, at a rate or in an amount per annum not in excess of twenty-five percent of the amount of license fees prescribed therefor from time to time in the alcoholic beverage control law.

(e) Taxes on the use of passenger motor vehicles of a type commonly used for non-commercial purposes owned by residents of the city at a rate per annum for each such vehicle of not in excess of five dollars if such vehicle weighs thirty-five hundred pounds or less and not in excess of ten dollars per annum if such vehicle weighs more than thirty-five hundred pounds; and taxes on the use of trucks, buses and other such commercial motor vehicles used principally in connection with a business carried on within the city, except when owned and used in connection with the operation of a farm by the owner or tenant thereof, at a rate per annum for each such vehicle of not in excess of ten dollars.

(f) (1) Taxes on the sale of containers made in whole or in part of

rigid or semi-rigid paperboard, fibre, glass, metal, plastic or any combination of such materials, including, but not limited to, barrels, baskets, bottles, boxes, cans, cartons, carrying cases, crates, cups, cylinders, drums, glasses, jars, jugs, pails, pots, rigid foil containers, trays, tubs, tubes, tumblers, and vessels, intended for use in packing or packaging any product intended for sale. Such taxes shall be levied upon the seller or supplier of the container who or which makes sales thereof to the person who purchases them (whether filled or unfilled) for the purpose of using them in connection with and as part of sales at retail or who receives them as containers of products intended for sale at retail. Where no tax has been paid by such seller or supplier, the buyer or person who purchases the container to use it or its contents in making a sale at retail shall be liable for tax thereon upon purchasing such container. Notwithstanding the provisions of section twelve hundred twenty of this article, sellers and suppliers having no business situs in the city imposing the tax, who sell such containers to retailers within the city may pay the tax so as to prevent its levy upon such retailers. Such taxes shall be imposed at rates not to exceed (i) three cents for each plastic bottle, (ii) two cents for each other plastic container, (iii) two cents for each glass container, (iv) two cents for each metal container except one cent for metal containers shown to be made of one metal only. Where a container is made of a combination of two or more of the materials with which this subdivision deals, it shall be classified and be taxable as if it were made of that of its component materials for which the following table provides the highest rate:

fibre and paperboard	metal	glass	plastic
10	20	20	30

(2) Any local law enacted pursuant to this subdivision may provide that: (i) metal containers and paperboard or fibre containers which have been impregnated, lined or coated with plastic or other materials shall be considered to be classified and taxable as metal containers and paperboard containers, respectively; (ii) paperboard or fibre containers with fastenings, tops and/or bottoms made of other materials dealt with by this subdivision shall be classified and taxed as paperboard or fibre containers; (iii) paperboard, metal, or plastic caps that are easily, readily, usually, and customarily separated from the container before

disposal shall not be considered part of the container; and (iv) notwithstanding any exception made pursuant to subparagraphs (i), (ii) and (iii) of this paragraph, where a preponderantly glass container is made of a combination of taxable materials, the complete separation of which materials is not easily, readily, usually and customarily effected after use and before disposal, such container shall be taxed one cent in addition to the tax otherwise imposed upon it, but in no event shall the aggregate tax on such container exceed three cents.

(3) Any local law enacted pursuant to this subdivision may provide that containers sold or furnished containing products intended for use in manufacturing processes and not for final retail sale shall be exempt from such taxes.

(4) Local laws imposing taxes authorized by this subdivision shall provide for the allowance of credits against such taxes as follows:

(i) one cent for each taxable container if manufactured with the following minimum percentages of recycled material:

(A) Paperboard and fibre containers: eighty per cent, if made of boxboard; thirty per cent if made of foodboard, fibre or containerboard.

(B) Metal containers: thirty per cent if taxed during the period beginning July first, nineteen hundred seventy-one and ending June thirtieth, nineteen hundred seventy-two; and forty per cent, if taxed thereafter.

(C) Glass containers: twenty per cent if taxed during the period beginning July first, nineteen hundred seventy-one and ending June thirtieth, nineteen hundred seventy-two; and thirty per cent, if taxed thereafter.

(D) Plastic containers: thirty per cent.
(ii) one cent for each container of a clearly distinct type, class,

pattern or form taxed during any taxable period provided that sixty per cent or more of all the containers of such distinct type, class, pattern or form subject to tax during such period were reused containers.

(iii) Provided that the credits for each container during any taxable period shall not exceed the amount of taxes due on such container for such period.

(5) The fiscal officer of any such city in charge of the administration of any tax imposed pursuant to this subdivision, may be authorized by any local law enacted pursuant to this subdivision, to prescribe by regulation, upon the joint recommendation of the chief officer in charge of the department or agency of such city dealing with the interests of consumers and the chief officer in charge of the department or agency of such city charged with the duty of waste collection and disposal:

(i) additional exemptions from and credits against the tax imposed by such local law; and

(ii) an additional surtax of no more than one cent per container, to be imposed upon containers made of any of the taxable components dealt with by this subdivision or any combination thereof.

In granting such exemption or credit or providing for such additional surtax, the above mentioned officers shall take into consideration the following qualities and characteristics of the container in question:

(A) the difficulty the container's material poses to the process of making recycled material.

(B) the difficulty of its manufacture from recycled materials.

(C) the difficulty and relative cost of its disposal.

(D) any obstacle it poses to consumer protection.

(E) the degree to which the container can or cannot be reused.

(F) the slowness, difficulty, and incompleteness with which the container degrades in the natural environment, either chemically or biologically.

Any such exemption, credit or surtax may be revoked by joint action of such officers, or by local law.

(6) There shall be exempted from any tax imposed pursuant to the authority of this subdivision, containers used as receptacles for food, food products, beverages, dietary foods and health supplements, sold for

human consumption but not including (i) candy and confectionery, (ii) fruit drinks with contain less than seventy per cent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa) and (iv) beer, wine or other alcoholic beverages.

(7) When used in this subdivision the words (i) "recycled material" mean component materials which have been derived from previously used material or from new or old scrap material, (ii) "retail sale" or "sale at retail" means a sale to any person for any purpose other than for resale as such or as a physical component part of tangible personal property, (iii) "taxable period" means each calendar month or such other periods as the official administering any tax enacted pursuant to this subdivision may provide for by regulation, (iv) "one metal only" means metal with such minimum amounts of alloys as the officer charged with the administration of any local law enacted pursuant to this subdivision shall provide by regulation, but shall not include metal which has been plated or lined with another metal. In formulating such regulations such officer shall consult with the chief officer in charge of the department or agency of such city dealing with the interests of consumers and the chief officer in charge of the department or agency of such city charged with the duty of waste collection and disposal and shall consider the difficulty of using the metal in the making of recycled material and the availability of or technical feasibility of manufacturing other metals for the same purpose and use as the metal in question but with a lower alloy content.

(g) A tax not to exceed fifteen dollars per annum per vehicle to be paid by the owner thereof: (1) for every motor vehicle registered or required to be registered pursuant to subdivision six of section four hundred one of the vehicle and traffic law if such vehicle is owned by

(i) one or more natural persons, other than a firm, co-partnership, limited liability company, trustee or trustees conducting a business or association, who, or one of whom: (A) at the time when he makes application for the registration, re-registration or renewal thereof of such motor vehicle is domiciled in the city, unless he maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and during the period of one year next preceding the date upon which such application is made, spent in the aggregate not

more than thirty days in the city, or (B) at the time when he makes such application, is not domiciled in the city, but maintains a permanent place of abode in the city and, during the period of one year next preceding the date upon which such application is made, spent in the aggregate more than one hundred and eighty-three days in the city, unless such individual is in the armed forces of the United States; or

(ii) a person, firm, co-partnership, limited liability company, trustee or trustees conducting a business or association, or a corporation who or which at the time when such owner makes application for registration, re-registration or renewal thereof of such motor vehicle, regularly keeps, stores, garages or maintains such motor vehicle in the city; and

(2) for every motor vehicle owned by a person, firm, partnership, limited liability company, association or corporation engaged in the business of renting or leasing motor vehicles to be operated upon the public highways for carrying passengers registered or required to be registered pursuant to any provision of section four hundred one of the vehicle and traffic law, which vehicle at the time when such owner makes application for registration, re-registration or renewal thereof is regularly kept, stored, garaged or maintained in the city including such vehicles which have been rented or leased by the owner and are in possession of lessees when such application for registration, re-registration or renewal is made.

(3) The payment of such tax shall be a condition precedent to the registration, re-registration or renewal thereof of such motor vehicle and to the issuance of any certificate of registration and plates or removable date tag specified in subdivision three of section four hundred one and in sections four hundred three and four hundred four of the vehicle and traffic law, and no such certificate of registration, plates or tag shall be issued unless such tax has been paid. The commissioner of motor vehicles shall not issue a registration certificate for any motor vehicle for which the registrant's address is within any such city, except upon proof, in a form approved by the commissioner of motor vehicles, that such tax, if imposed by such city, has been paid, or is not due, with respect to such motor vehicle.

(h) Notwithstanding the provisions of this article or of any other law, any local law adopted by a city of one million or more, imposing a

tax authorized by subdivision (g) of this section may provide that such tax shall be administered and collected by the commissioner of motor vehicles or his agents. In the event that such local law does so provide, such tax shall not be imposed upon an application for the re-registration of a motor vehicle, and further, the commissioner of motor vehicles shall enter into an agreement with the finance administrator or other appropriate fiscal officer of such city, which agreement shall govern the administration and collection of any such tax and which agreement shall have the force and effect of a rule or regulation of the commissioner and shall be filed and published in accordance with any statutory requirements relating thereto.

Notwithstanding any other provision of law, such agreement shall provide for the exclusive method of collection, custody and remittal of the proceeds of any such tax; for the payment by such city of the reasonable expenses incurred by the department of motor vehicles in connection with the collection and administration of any such tax; for the finance administrator or other appropriate fiscal officer, or a duly designated representative, upon his request, not more frequently than once in each calendar year at a time agreed upon by the state comptroller, to audit the accuracy of the payments, distributions and remittances to such finance administrator or other appropriate fiscal officer made pursuant to this subdivision; and for such other matters as may be necessary and proper to effectuate the purposes of such agreement.

(i) A tax on admission charges for admission to motion picture exhibitions or live dramatic, choreographic or musical performances, whether at a theatre, opera house, concert hall or other place, at a rate not to exceed three percent. However, such a tax shall not apply to any admission charge to a motion picture exhibition for admission of a person twelve years of age or under.

(j) (1) A tax on the transfer of a taxicab license, or interest therein, at a rate not to exceed eight percent of the consideration given for such transfer.

(2) The tax shall be imposed on the transferee, but any local law imposing the tax authorized by this subdivision may provide that the transferor shall also be liable for the payment of such tax in the event that the amount of tax due is not paid by the transferee.

(3) Notwithstanding any other law to the contrary, no transfer of a

taxicab license shall be effective until any tax imposed pursuant to the authority of this subdivision has been paid.

(4) Where there is a transfer of the economic interest in a taxicab license effected by the sale of shares of stock of a corporation which holds the taxicab license, or by the transfer of an interest or interests in a partnership or association which holds the taxicab license, any local law enacted pursuant to the authority of this subdivision may provide that such a transfer shall be treated as a transfer of the taxicab license or interest therein, subject to the tax authorized by this subdivision.

(5) Where there is a transfer of a taxicab or other property in conjunction with the transfer of a taxicab license or interest therein, such local law may provide that the tax shall be computed on the total consideration for the transfer of the license, or interest therein, the taxicab and any other property so transferred less the market value of such taxicab and such other property.

(6) When used in this subdivision, the following terms shall mean:

(i) "Transfer." Any transfer of interest whether or not such interest constitutes title, or possession, or both, exchange or barter, rental, lease, or license to use, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

(ii) "Taxicab." A motor vehicle carrying passengers for hire in a city imposing the tax authorized by this subdivision, duly licensed as a taxicab by such city, and permitted to accept hails from passengers in the street.

(iii) "Taxicab license." A license issued by the taxi and limousine commission in such city, or its successor agency, to operate a taxicab.

(k) Any local law imposing a tax on the gross receipts (or gross income or gross operating income) from sales of electricity, gas or steam, or sales of delivery services for any of the foregoing, to persons within such city enacted pursuant to subdivision (a) of this section may provide for a deduction from gross receipts (or gross income or gross operating income) of all receipts derived from the sale of electricity, gas or steam, or sale of delivery services for any of the foregoing, to non-residential energy users of such electricity, gas or steam, or from the sale of delivery services to a public utility service operated by such city in accordance with a local law adopted pursuant to

article fourteen-A of the general municipal law or from the sale of delivery services to the power authority of the state of New York, in connection with the sale of electricity, gas or steam to non-residential energy users of such electricity, gas or steam, except that no deduction shall be allowed for receipts derived from sales of electricity, or sales of delivery services for electricity, to or by an electricity redistributor, or sales of delivery services for electricity to a public utility service operated by such city in accordance with a local law adopted pursuant to article fourteen-A of the general municipal law or sales of such delivery services to the power authority of the state of New York, in connection with the sale of electricity by such public utility service or such authority to an electricity redistributor, unless such electricity redistributor has obtained a certification of eligibility pursuant to a local law enacted in accordance with the authorization contained in article two-G of the general city law. No such deduction authorized herein shall affect the computation specified in subdivision four of section three contained in section one or subdivision (a) of section one hundred three contained in section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, as amended, with regard to vendors of utility services. For purposes of this subdivision, the terms "non-residential energy user" and "electricity redistributor" shall have the same meaning as ascribed by article two-G of the general city law.

(l) In addition to any privilege taxes on amusement devices authorized by subdivision (c) of this section, there shall be authorized an additional privilege tax on amusement devices operated by coins, tokens or currency (either generally or upon selected types or classes of such devices) including, but not limited to, juke box, music, skill game, digger, pool or billiard tables, booths providing live entertainment, and moving picture and video devices, at a rate not to exceed one hundred fifty dollars per annum for each such device.

(m) Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized to adopt and amend local laws which conform the local law of such city to the provisions of law set forth in part U3 of a chapter of the laws of two thousand three amending the general business law and other laws relating to implementing the state fiscal plan for the 2003-2004 state fiscal

year, as proposed in legislative bill numbers S. 1406-B and A. 2106-B, as amended, with such modifications as may be necessary to adapt such provisions to such local law so that such local law is substantially similar to the law of the state.

§ 1201-a. Credits against taxes administered by cities of one million or more. (a) Any utility company subject to the supervision of the public service commission required to grant rebates or discounts on bills for energy services or natural gas in accordance with a local law adopted pursuant to article two-F of the general city law shall be entitled to a credit for such rebates and discounts, as provided in such article of the general city law, against the amount of tax to be paid pursuant to any gross receipts tax imposed by a local law adopted pursuant to subdivision (a) of section twelve hundred one of this chapter. The amounts of such rebates and discounts shall not be treated as affecting or reducing the gross receipts otherwise subject to tax under such gross receipts tax or reducing the amount of tax imposed by or pursuant to any authorization contained in this chapter.

(b) Empire state film production credit. Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized to adopt and amend local laws to allow a credit against the general corporation tax and the unincorporated business tax imposed pursuant to the authority of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six which shall be substantially identical to the credit allowed under section twenty-four of this chapter, except that (A) the percentage of qualified production costs used to calculate such credit shall be five percent, (B) whenever such section twenty-four references the state, such words shall be read as referencing the city, (C) such credit shall be allowed only to a taxpayer which is a qualified film production company, and (D) the effective date of such credit shall be July first, two thousand six. Such credit shall be applied in a manner consistent with the credit allowed under subdivision twenty of section two hundred ten-B of this chapter except as may be necessary to take into account differences between the general corporation tax and the unincorporated business tax.

(c) Empire state commercial production credit. Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized to adopt and amend local laws to allow a credit against the general corporation tax and the unincorporated business tax imposed pursuant to the authority of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six which shall be substantially identical to the credit allowed under the provisions of section twenty-eight of this chapter, except that (A) the percentage of qualified production costs used to calculate such credit shall be five percent, (B) whenever such section twenty-eight references the state, such words shall be read as referencing the city, (C) such credit shall be allowed only to a taxpayer that is a qualified commercial production company, and (D) the effective date of such credit shall be as provided in local laws. Such credit shall be applied in a manner consistent with the credit allowed under subdivision twenty-three of section two hundred ten-B of this chapter except as may be necessary to take into account differences between the general corporation tax and unincorporated business tax.

(d) Biotechnology credit. 1. Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized to adopt and amend local laws to allow a credit against the general corporation tax and the unincorporated business tax imposed pursuant to the authority of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six which shall be substantially identical to the credit described in subdivision twenty-one of section 11-654 of the administrative code of the city of New York, against the business corporation tax imposed pursuant to chapter sixty of the laws of two thousand fifteen, except that the effective date of such credit against the general corporation tax and the unincorporated business tax shall be as provided in such local laws.

2. The credit allowed by paragraph one of this subdivision shall be applied in a manner consistent with the credit described in subdivision twenty-one of section 11-654 of the administrative code of the city of New York except as may be necessary to take into account differences between such business corporation tax and such general corporation tax and such unincorporated business tax.

3. The aggregate amount of tax credits allowed under this subdivision in any calendar year shall be up to three million dollars. Such aggregate amount of credits shall be allocated by the New York city department of finance among eligible taxpayers on a pro rata basis. Taxpayers eligible for such pro rata allocation shall be determined by the New York city department of finance no later than February twenty-eighth of the succeeding calendar year in which a credit provided pursuant to this subdivision is applied.

4. The New York city department of finance shall establish by rule procedures for the allocation of tax credits allowed by local laws adopted pursuant to this subdivision. Such rules shall include provisions describing the application process, the due dates for such applications, the standards that shall be used to evaluate the applications, the documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to such taxpayers, and such other provisions as deemed necessary and appropriate.

5. Any local law adopted pursuant to this subdivision may provide for a credit as authorized by this subdivision for a maximum of three consecutive calendar years, provided, however, that any such credit:

(A) may not apply to taxable years beginning before January first, two thousand ten or beginning on or after January first, two thousand nineteen; and

(B) may not apply to taxable years beginning before January first, two thousand twenty-three or beginning on or after January first, two thousand twenty-six.

6. Any city in this state having a population of one million or more, acting through its local legislative body, is authorized to provide the credit set forth in subdivision twenty-one of section 11-654 of the administrative code of the city of New York, against the business corporation tax imposed pursuant to chapter sixty of the laws of two thousand fifteen, for a maximum of three consecutive calendar years, provided, however, that such credit may not apply to taxable years beginning before January first, two thousand twenty-three or beginning

on or after January first, two thousand twenty-six.

§ 1201-b. Additional credits against taxes administered by cities of one million or more. Any person, corporation or other entity required or permitted to grant rebates or discounts on bills for electricity, gas or steam in accordance with a local law adopted pursuant to article two-G of the general city law shall be entitled to a refundable credit for such rebates and discounts made, to the extent such credit is specifically authorized by such article of the general city law, against the amount of tax to be paid pursuant to any gross receipts tax imposed by a local law adopted pursuant to subdivision (a) of section twelve hundred one of this chapter. Notwithstanding any other provision of law to the contrary, no taxpayer taking a credit as authorized herein shall incur any increased liability for any taxes imposed pursuant to the authorization contained in chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, as amended, by reason of such credit.

§ 1201-c. Credits against taxes administered by cities of one million or more. Any utility company which is subject to the supervision of the public service commission and is required to grant rebates or discounts on bills for energy services in accordance with article two-I of the general city law shall be entitled to a credit for such rebates or discounts against the amount of tax to be paid pursuant to any gross receipts tax imposed by a local law adopted pursuant to subdivision (a) of section twelve hundred one of this article. The amounts of such rebates or discounts shall not be treated as affecting or reducing the gross receipts otherwise subject to tax under such gross receipts tax or reducing the amount of tax imposed by or pursuant to any authorization contained in this chapter.

§ 1201-d. Dedication of taxes authorized for cities and counties. (a) Notwithstanding any other provision of law to the contrary, any authorization for a city or county to impose a tax pursuant to this article, may condition such authorization upon the dedication of such

revenue derived from such tax imposed, to a public benefit corporation established as an industrial development agency or an area revitalization agency pursuant to article eighteen-A of the general municipal law or to a public authority established for economic development or transportation purposes pursuant to the public authorities law.

(b) In the event that a city or a county imposes a tax pursuant to this article, in accordance with a conditional authorization as described in subdivision (a) of this section, such city or county shall dedicate the revenue from such tax so imposed to the designated public benefit corporation established as an industrial development agency or an area revitalization agency pursuant to article eighteen-A of the general municipal law or public authority established for economic development or transportation purposes pursuant to the public authorities law.

§ 1201-e. Credit. A taxpayer that is subject to a gross receipts tax imposed under a local law adopted pursuant to subdivision (a) of section twelve hundred one of this article shall be entitled to a credit to the extent provided in sections twenty-five-y and twenty-five-z of the general city law with respect to a relocation as therein defined on or after January first, nineteen hundred ninety-nine.

§ 1202. Taxes administered by counties not wholly within a city. (a) Notwithstanding any other provision of law to the contrary, any county in this state, except a county wholly within a city, is hereby authorized and empowered, subject to the limitations and exemptions in part II of this article, to adopt and amend local laws, ordinances or resolutions imposing in any such county any of the types of taxes authorized under subdivisions (c), (d) and (e) of section twelve hundred one, at the rates provided for therein, such taxes to be administered and collected in the manner provided for in subpart A of part III of this article.

(b) Any county authorized and empowered to impose a tax as provided by this section, may, before acting hereunder, by resolution of its board

of supervisors, cause to be submitted to the qualified electors of said county, in the manner provided for the submission of a question to electors by the election law and article three of the county law, a proposition or question as to whether such a tax shall be imposed by said county under the provisions of this section.

(c) Notwithstanding the provisions of this article or any other law, a local law, ordinance or resolution adopted by a county, imposing a tax of the type authorized under subdivision (e) of section twelve hundred one of this chapter may provide that such tax shall be administered and collected by the commissioner of motor vehicles or his agents. In the event that such local law, ordinance or resolution does so provide, such tax shall not be imposed upon an application for the re-registration of a motor vehicle, and further, the commissioner of motor vehicles shall enter into an agreement with the finance administrator or other appropriate fiscal officer of such county, which agreement shall govern the administration and collection of any such tax. Such agreement shall have the force and effect of a rule or regulation of the commissioner of motor vehicles and shall be filed and published in accordance with any statutory requirements relating thereto. Notwithstanding any other provision of law, such agreement shall provide for the exclusive method of collection, custody and remittal of the proceeds of any such tax; for the payment by such county of the reasonable expenses actually incurred by the department of motor vehicles in connection with the collection and administration of any such tax; for the department of motor vehicles periodically to provide an accounting to the appropriate county fiscal officer summarizing revenues collected and administrative expenses actually incurred by the department pursuant to such agreement with the county; and for such other matters as may be necessary and proper to effectuate the purposes of such agreement.

* (d) (i) For the purposes of this subdivision, "entertainment" means all forms of commercial or professional entertainment, including, but not limited to, concerts, professional athletic events, theatrical or operatic performances, and trade shows performed or conducted within arenas or facilities with a permanent seating capacity in excess of two thousand five hundred persons. Events performed at or sponsored by colleges or universities, any amateur athletic competitions and all events and programs conducted at a facility owned or operated by an

off-track betting corporation or a non-profit racing association shall be excluded from the provisions of this subdivision.

(ii) Notwithstanding any other provisions of law to the contrary, the county of Nassau is hereby authorized and empowered to adopt and amend local laws, ordinances and resolutions imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article or other law such as the legislature has or would have the power and authority to impose an assessment, to be known as an "entertainment surcharge" upon every facility or arena as referred to in paragraph (i) of this subdivision selling tickets for admission to places of entertainment in the county, in addition to the admission price of the tickets sold, at a rate of one dollar and fifty cents on each admission ticket. Such surcharge shall be imposed at facilities and arenas as referred to in paragraph (i) of this subdivision.

(iii) Such tax may be collected and administered by the county treasurer or other fiscal officers of Nassau county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law, ordinance or resolution.

* NB Repealed December 31, 2027

(e) Notwithstanding the provisions of this article or any other law, a local law, ordinance or resolution adopted by a county, imposing a tax of the type authorized under subdivision (e) of section twelve hundred one of this article may provide that such tax shall be administered and collected by the commissioner of motor vehicles or his or her agents; provided, however, that the amount of such taxes in the county of Nassau on the use of all passenger motor vehicles of a type commonly used for noncommercial purposes owned by residents of the county shall be at a rate per annum for each such vehicle not in excess of fifteen dollars regardless of the weight of such vehicle; and the amount of such taxes on the use of trucks, buses and other such commercial motor vehicles used principally in connection with a business carried on within such county, except when owned and used in connection with the operation of a farm by the owner or tenant thereof, shall be at a rate per annum for each such vehicle of not in excess of forty dollars.

(f) The county of Westchester, in imposing taxes of the type authorized under subdivision (e) of section twelve hundred one of this

part, may impose taxes on the use of passenger motor vehicles of a type commonly used for non-commercial purposes owned by residents of the county at a rate per annum for each such vehicle of not in excess of fifteen dollars if such vehicle weighs thirty-five hundred pounds or less and not in excess of thirty dollars per annum if such vehicle weighs more than thirty-five hundred pounds; and taxes on the use of trucks, buses and other such commercial motor vehicles used principally in connection with a business carried on within the county, except when owned and used in connection with the operation of a farm by the owner or tenant thereof, at a rate per annum for each such vehicle of not in excess of thirty dollars.

(g) The county of Suffolk, in imposing taxes of the type authorized under subdivision (e) of section twelve hundred one of this subpart, may impose taxes on the use of passenger motor vehicles of a type commonly used for non-commercial purposes owned by residents of the county at a rate per annum for each such vehicle of not in excess of fifteen dollars if such vehicle weighs thirty-five hundred pounds or less and not in excess of thirty dollars per annum if such vehicle weighs more than thirty-five hundred pounds; and taxes on the use of trucks, buses and other such commercial motor vehicles used principally in connection with a business carried on within the county, except when owned and used in connection with the operation of a farm by the owner or tenant thereof, at a rate per annum for each such vehicle of not in excess of thirty dollars.

§ 1202-a. Hotel or motel taxes in Onondaga county. (1) Notwithstanding any other provisions of law to the contrary, the county of Onondaga is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. The rates of such tax shall be seven percent of the per diem rental rate for each room provided however, such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least

thirty consecutive days.

(2) Such tax may be collected and administered by the finance administrator or other fiscal officers of Onondaga county by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the county charter or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Onondaga imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the finance administrator or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This act shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund

or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or;

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund

thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this act shall be paid into the treasury of the county of Onondaga and shall be credited to and deposited in the general fund of the county; and may thereafter be allocated at the discretion of the Onondaga county legislature for any county purpose.

(10) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-aa. Occupancy tax in the city of New Rochelle. (1)**

Notwithstanding any other provision of law to the contrary, the city of New Rochelle, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion thereof which is regularly utilized and kept open

for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis period of time.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of New Rochelle by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the hotel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the hotel or other similar place of public accommodation occupied for and on account of the city of New Rochelle imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of such tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the hotel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the hotel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other

political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under such article seventy-eight shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which

may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of New Rochelle and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 7 § 1202-aa's

* NB Repealed September 1, 2027

*** § 1202-aa. Occupancy tax in the city of White Plains. (1)**

Notwithstanding any other provisions of law to the contrary, the city of White Plains, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of White Plains by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local laws.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the room for hire in the hotel or to the person entitled to be paid the rent or charge for the room for hire in the hotel occupied for and on account of the city of White Plains imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the hotel, or in respect to nonpayment of the tax by the person occupying the room for hire in the hotel, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that

the chief fiscal officer of the city of White Plains, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the

supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under such article seventy-eight shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the

filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of White Plains and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel tax for a period to expire on December thirty-first, two thousand twenty-seven. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 7 § 1202-aa's

*** § 1202-aa. Hotel or motel taxes in Schoharie county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Schoharie is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the board of supervisors has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Schoharie county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Schoharie imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious,

charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such

officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Schoharie county and shall be credited to and deposited in the general fund of the county; provided, however, that such local laws shall provide that: (a) the county shall be authorized to dedicate a portion of such revenue to promote tourism and other forms of business in the county; and (b) the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 7 § 1202-aa's

*** § 1202-aa. Hotel and motel tax in Washington county. (1)**

Notwithstanding any other provision of law to the contrary, the county of Washington is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel or motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", "inn", "housekeeping cottages with four or more units", and "tourist facilities".

The rates of such tax shall be one-half of one percent, any whole percent or any combination of a whole percent and one-half of one percent; provided that such rates shall not exceed four percent; provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of the county of Washington by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Washington imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer

or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil

practice law and rules shall not be instituted unless:

a. the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. at the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Washington and shall be credited to and deposited in the general fund of the county, thereafter to be allocated for tourism promotion and tourist and convention development; provided, however, that such local laws shall provide that the county of Washington shall be authorized to retain up to a maximum of fifteen percent of such revenues to defer the necessary expenses of such county in administering such tax. The revenues derived from such tax, after deducting the amount provided for administering the tax, as provided by local law, shall be allocated to promote tourism in, preserve the heritage of, and celebrate the agricultural community in the county of Washington through the promotion of tourist activities, conventions, trade shows, special events, and other directly related and supporting activities.

(10) Each enactment of such local law may provide for imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 7 § 1202-aa's

*** § 1202-aa. Hotel or motel taxes in Orange county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Orange is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the county legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and

"tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Orange county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Orange imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another

state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionally or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum

sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Orange and shall be credited to and deposited in the general fund of the county.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 7 § 1202-aa's

*** § 1202-aa. Hotel or motel taxes in the city of Peekskill. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Peekskill is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Peekskill by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Peekskill imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal

officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the

local laws shall be paid into the treasury of the city of Peekskill and shall be credited to and deposited in the general fund of the city; and the local law shall provide that the city shall be authorized to retain the necessary revenue to defer the expense of the city in administering such tax and the balance of such revenues shall be allocated to enhance the general economy of the city of Peekskill.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 7 § 1202-aa's

*** § 1202-aa. Hotel or motel taxes in Tioga county.** (1) Notwithstanding any other provisions of law to the contrary, the county of Tioga is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least fourteen consecutive days.

(2) Such tax may be collected and administered by the deputy county administrator of finance or other fiscal officers of Tioga county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room

occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Tioga imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the deputy county administrator of finance or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary

purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper

fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Tioga county and shall be credited to and deposited in the general fund of the county, thereafter to be allocated at the discretion of the county legislature of the county of Tioga for the purposes of tourism and economic development; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of Tioga county, its cities, towns, and villages, through promotion of tourist activities, conventions, trade shows, special events, and other directly related and supporting activities.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 7 § 1202-aa's

*** § 1202-aa-1. Hotel or motel taxes in the town of Montgomery. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Montgomery, in the county Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Montgomery by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Montgomery imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the

payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company

authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Montgomery and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to

any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed October 16, 2027

* **§ 1202-aaa. Occupancy tax in the city of Rye.** (1) Notwithstanding any other provision of law to the contrary, the city of Rye, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Rye by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the hotel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the hotel or other similar place of public accommodation occupied for and on account of the city of Rye imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the hotel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the hotel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as

the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state of the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of

the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under such article seventy-eight shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made

after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Rye and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

§ 1202-b. Hotel or motel taxes in Broome county. (1) Notwithstanding any other provisions of law to the contrary, Broome county is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. The rates of such tax shall be five percent of the per diem rental rate for each room provided however, such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the finance administrator or other fiscal officer of Broome county by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the county charter or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of Broome county imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the finance administrator or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This act shall not authorize the imposition of such tax upon the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in

this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. at the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was

not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Three-fifths of revenues resulting from the imposition of tax authorized by this act shall be paid into the treasury of Broome county and shall be credited to and deposited in the general fund of the county; and may thereafter be allocated at the discretion of the Broome county legislature for any county purpose. Two-fifths of revenues resulting from the imposition of tax authorized by this section shall be deposited in a special account to be known as the "county economic development initiative fund" to be created by the county of Broome therefor and to be maintained separate and apart from any other funds and accounts of the county. The legislative body of the county of Broome shall designate the specific purposes for which these funds may be used.

(10) Such local law may provide for the imposition of an occupancy tax for a period of time no longer than three years from the date of its enactment.

(11) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-bb. Occupancy tax in the Village of Rye Brook. (1)**

Notwithstanding any other provision of law to the contrary, the Village of Rye Brook, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and

authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the Village of Rye Brook by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefore to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the Village of Rye Brook imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and

approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the Village of Rye Brook and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years

from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

*** § 1202-bbb. Occupancy tax in the of village of Catskill. (1)**

Notwithstanding any other provisions of law to the contrary, the village of Catskill, in the county of Greene, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any hotel or motel providing lodging on an overnight basis. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall be four percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in any hotel or motel providing lodging on an overnight basis for at least thirty consecutive days.

(2) Such taxes may be collected and administered by the village treasurer or other fiscal officers of the village of Catskill by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of any hotel or motel providing lodging on an overnight basis occupied or to the person entitled to be paid the rent or charge for the hotel or motel providing

lodging on an overnight basis occupied for and on account of the village of Catskill imposing the taxes and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the taxes; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the taxes from the person occupying the hotel or motel providing lodging on an overnight basis or in respect to nonpayment of the taxes by the person occupying the hotel or motel providing lodging on an overnight basis, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the village treasurer or other fiscal officers of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the taxes by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such taxes upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; and

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not

all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any taxes payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any taxes sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of taxes due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties

as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the taxes, no assessment of additional taxes shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the taxes may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Catskill and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

§ 1202-c. Hotel or motel taxes in Jefferson county. (1)

Notwithstanding any other provisions of law to the contrary the county of Jefferson is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax in addition to any tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose on persons occupying hotel rooms and/or motel rooms in such county. The rates of such tax shall be three percent of the per diem rental rate charged to occupants for each room, provided, however, such tax shall not be applicable to a permanent resident of a hotel and/or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel and/or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Jefferson county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by

the person liable therefor to the owner of the hotel room occupied or to the person entitled to be paid the rent or charge for the hotel and/or motel room occupied for and on account of the county of Jefferson imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting nonpayment of the tax by the person occupying the hotel room and/or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This act shall not authorize the imposition of such tax upon the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not

all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless;

a. The amount of any tax sought to be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of the tax authorized by this act shall be paid into the treasury of the county of Jefferson and shall be credited to and deposited in a special tourism and convention fund and the collections therefrom, excluding the cost of administration, shall thereafter be allocated by the board of supervisors of Jefferson county only for tourism and convention development. The funds so allocated shall be used for the purpose of promoting Jefferson county, its cities, towns and villages, in order to increase convention/trade show and tourist business.

(10) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-cc. Hotel or motel taxes in Franklin county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Franklin is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the county legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty

consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Franklin county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Franklin imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund

or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application

for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Franklin and shall be credited to and deposited in the general fund of the county, thereafter to be allocated for the promotion of tourism development, economic development, and other directly related and supporting activities; provided, however, that such local laws shall provide that the county of Franklin shall be authorized to retain up to a maximum of ten percent of such revenues to defer the necessary expenses of such county in administering such tax.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 2 § 1202-cc's

*** § 1202-cc. Hotel or motel taxes in Delaware county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Delaware is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the county legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed two percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Delaware county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Delaware imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law,

shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the

local laws shall be paid into the treasury of the county of Delaware and shall be credited to and deposited in the general fund of the county.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 2 § 1202-cc's

§ 1202-d. Hotel or motel taxes in Oneida county. (1) Notwithstanding any other provisions of law to the contrary, the county of Oneida is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. The rates of such tax shall be five percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days, also provided that the county of Oneida may provide in its local law imposing such hotel and motel occupancy tax that such tax shall not be applicable to a hotel or motel having twenty-five rooms or less.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Oneida county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the

hotel or motel room occupied for and on account of the county of Oneida imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This act shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in

this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such

proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the county of Oneida and shall be credited to and deposited in the Oneida county trust and agency fund; the net collections therefrom shall thereafter be allocated by the county legislature of Oneida and shall be used for the promotion of tourism development, economic development, and other directly related and supporting activities by a not-for-profit and/or a public benefit corporation under contract with the county. Promotion of tourism and conventions being specifically defined as the retaining of staff for the purpose of placing and purchasing of advertising promoting the county, and engaging in such other efforts as are designed to induce tourist and convention attraction to Oneida county.

(10) Each enactment of a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-dd. Hotel or motel taxes in the city of Hudson. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Hudson, Columbia county, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the

legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility or building or portion thereof providing lodging on an overnight basis and shall include facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Hudson by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Hudson imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Hudson and shall be credited to and deposited in the general fund of the city. The city shall be authorized to retain the necessary revenue to defer the expense of the city in administering such tax and the balance of such revenues shall be allocated to the promotion of tourism in the city of Hudson or used for other lawful purpose as set out in such local law.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB Repealed December 1, 2027

* NB There are 5 § 1202-dd's

*** § 1202-dd. Hotel or motel taxes in Fulton county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Fulton is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the county legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Fulton county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Fulton imposing the tax and that such owner or person entitled to be paid the

rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax

confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Fulton and shall be credited to and deposited in the general fund of the county, thereafter to be allocated for the promotion of tourism development, economic development, and other directly related and supporting activities.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 5 § 1202-dd's

*** § 1202-dd. Hotel or motel taxes in the town of Greenburgh and specified villages therein and in the village of Sleepy Hollow. (1)** Notwithstanding any other provisions of law to the contrary, the following municipalities are hereby authorized and empowered to adopt and amend local laws imposing a tax on persons occupying rooms in hotels or motels in such towns or villages therein, as the legislature has or would have the power and authority to impose, in addition to any other tax authorized and imposed pursuant to this article:

a. the town of Greenburgh, Westchester county, in those portions of such town not located within a village;

b. the villages of Tarrytown, Irvington, Ardsley, Elmsford, Dobbs Ferry, Hastings-on-Hudson situate in the town of Greenburgh; and

c. the village of Sleepy Hollow situate in the town of Mount Pleasant, Westchester county.

(2) For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served.

(3) The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(4) Such tax may be collected and administered by the commissioner of finance or other fiscal officer of the town of Greenburgh or of any specified village therein or of the village of Sleepy Hollow situate in the town of Mount Pleasant, as the case may be, by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the town or village charter or as otherwise may be provided by such local law.

(5) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Greenburgh or of any specified village therein or of the village of Sleepy Hollow situate in the town of Mount Pleasant imposing the tax, and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the commissioner of finance or other fiscal officers of such towns or villages, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or

charge.

(6) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(7) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada, improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; and

c. Any corporation or association or trust or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(8) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation

shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(9) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(10) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(11) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the town of Greenburgh or of the specified village therein or of the village of Sleepy Hollow situate in the town of Mount Pleasant, and shall be credited to and deposited in

the general fund of such town or village; and may thereafter be allocated at the discretion of the board of legislators of the town of Greenburgh or of the specified village therein or of the village of Sleepy Hollow situate in the town of Mount Pleasant for any town or village purpose.

(12) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(13) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 5 § 1202-dd's

* NB Repealed September 1, 2027

*** § 1202-dd. Occupancy tax in the village of Mamaroneck. (1)**

Notwithstanding any other provision of law to the contrary, the village of Mamaroneck, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Mamaroneck by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid

by the person liable therefore to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Mamaroneck imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to

the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Mamaroneck and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 5 § 1202-dd's

* NB Repealed December 31, 2027

*** § 1202-dd. Occupancy tax in the village of Port Chester. (1)**

Notwithstanding any other provision of law to the contrary, the village of Port Chester, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Port Chester by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Port Chester imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be

instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Port Chester and shall be credited to and deposited in the general fund of such village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 5 § 1202-dd's

* NB Repealed December 31, 2027

*** § 1202-dd-1. Occupancy tax in the village of Harrison. (1)**

Notwithstanding any other provision of law to the contrary, the village of Harrison, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Harrison by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the

tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Harrison imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously,

illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Harrison and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

*** § 1202-dd-2. Hotel or motel taxes in the town of Fishkill and in the village of Fishkill.** (1) Notwithstanding any other provisions of law to

the contrary, the following municipalities are hereby authorized and empowered to adopt and amend local laws imposing a tax on persons occupying rooms in hotels or motels in such town or village, as the legislature has or would have the power and authority to impose, in addition to any other tax authorized and imposed pursuant to this article:

a. the town of Fishkill, Dutchess county, in those portions of such town not located within the village of Fishkill; and

b. the village of Fishkill situate in the town of Fishkill.

(2) For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served.

(3) The rate of such tax shall not exceed two and one-half percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(4) Such tax may be collected and administered by the commissioner of finance or other fiscal officer of the town of Fishkill or of the village of Fishkill, as the case may be, by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the town or village charter or as otherwise may be provided by such local law.

(5) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Fishkill or of the village of Fishkill, and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the commissioner of finance or other fiscal officers of such town or

village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(6) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(7) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada, improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; and

c. Any corporation or association or trust or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(8) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(9) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(10) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(11) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the town of Fishkill or of

the village of Fishkill, and shall be credited to and deposited in the general fund of such town or village; and may thereafter be allocated at the discretion of the board of legislators of the town of Fishkill or of the village of Fishkill for any town or village purpose.

(12) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(13) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB Repealed December 31, 2027

§ 1202-e. Hotel or motel taxes in Schenectady county. (1)

Notwithstanding any other provisions of law to the contrary, the county of Schenectady is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. The rates of such tax shall be five percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the county commissioner of finance or other fiscal officers of Schenectady county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the

hotel or motel room occupied for and on account of the county of Schenectady imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county commissioner of finance or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in

this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or;

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such

proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the county of Schenectady and shall be credited to and deposited in the general fund of the county; the net collections therefrom shall thereafter be allocated by the board of representatives of Schenectady county only for direct tourism promotional activities, and for the promotion and development of the performing and visual arts in the county of Schenectady, as the cornerstone of the visitor and tourism industry in Schenectady county.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-ee. Hotel or motel taxes in the town of Woodbury. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Woodbury, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person

occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Woodbury by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Woodbury imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund

or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund

thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Woodbury and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

*** § 1202-eee. Hotel or motel taxes in the village of Woodbury. (1)**
Notwithstanding any other provisions of law to the contrary, the village of Woodbury, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and

providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Woodbury by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of Woodbury imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other

political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such

determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Woodbury and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed August 23, 2027

§ 1202-f. Hotel or motel taxes in Tompkins county. (1) Notwithstanding any other provisions of law to the contrary, the county of Tompkins is hereby authorized and empowered to adopt and amend local laws imposing

in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the deputy county administrator of finance or other fiscal officers of Tompkins county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Tompkins imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the deputy county administrator of finance or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or

shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that the provisions of this paragraph shall not apply to an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph. Nothing in this subdivision shall prohibit any organization exempt from taxation pursuant to this paragraph from collecting the taxes imposed pursuant to this section from individuals who are doing business with such exempt organization and who are not exempt from taxation pursuant to this subdivision.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Tompkins county and shall

be credited to and deposited in the general fund of the county, thereafter to be allocated for tourist and convention development; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of Tompkins county, its cities, towns, and villages, through promotion of tourist activities, conventions, trade shows, special events, and other directly related and supporting activities.

(10) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-ff. Hotel or motel taxes in Chenango county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Chenango is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the county legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Chenango county by such means and in such

manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Chenango imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to

the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a

proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Chenango and shall be credited to and deposited in the general fund of the county, thereafter to be allocated for the promotion of tourism development, economic development, and other directly related and supporting activities.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 2 § 1202-ff's

*** § 1202-ff. Occupancy tax in the city of Port Jervis. (1)**

Notwithstanding any other provision of law to the contrary, the city of Port Jervis, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition

to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Port Jervis by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied for and on account of the city of Port Jervis imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on a basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon

any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune for taxation;
or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or education purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations

shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Port Jervis and shall be credited to and deposited in the hospitality tax fund of such city. Such revenues may be used for infrastructure development,

construction, rehabilitation and promotion of designation tourism as so determined by the common council of the city of Port Jervis.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-ff's

* NB Repealed September 1, 2027

*** § 1202-g. Hotel or motel taxes in Cortland county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Cortland is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Cortland county by such means and in such manner as other taxes which are now collected and administered by such

officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Cortland imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however,

that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Cortland county and shall be credited to and deposited into a reserve account to be allocated for tourist and convention development and any other lawful purpose of the county related to economic development as set forth herein; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated as follows: at least seventy-five percent of up to the first one million dollars of net annual occupancy receipts shall be utilized to support and enhance the planning, promotion, marketing and growth of tourism, tourist activities and attractions, and tourist product development, and the remaining net occupancy tax proceeds shall be designated for any lawful county purpose related to economic development.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-g's

*** § 1202-g. Hotel or motel taxes in Steuben county. (1)**

Notwithstanding any other provision of law to the contrary, the county of Steuben is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the Steuben county legislature, or other fiscal officers of Steuben county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Steuben imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the Steuben county treasurer, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by

the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in the state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests, and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Steuben and shall be credited to and deposited in the general fund of the county,

thereafter to be allocated for tourist and convention development in the county of Steuben and the surrounding tourist region; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of the county of Steuben, its cities, towns and villages, and the general economy of the tourist region in which Steuben county is located, through promotion of tourist activities, conventions, track shows, special events, and other directly related and supporting activities; provided, however, that a maximum of seventy-five percent of the revenue derived from the tax may be allocated by the Steuben county legislature for regional promotion of tourism.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-g's

*** § 1202-g. Hotel or motel taxes in the county of Westchester.** (1) Notwithstanding any other provisions of law to the contrary, the county of Westchester is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, as the legislature has or would have the power and authority to impose upon persons occupying rooms in hotels or motels in such county. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such tax may be collected and administered by the commissioner of finance or other fiscal officer of the county of Westchester by such

means and in such manner as other taxes which are now collected and administered by such officers in accordance with the county charter or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Westchester imposing the tax, and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the commissioner of finance or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada, improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to

the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; and

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the county of Westchester and shall be credited to and deposited in the general fund of the county; and may thereafter be allocated at the discretion of the board of legislators of the county of Westchester for any county purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-g's

§ 1202-g-1. Hotel or motel taxes in Saratoga county and the city of Saratoga Springs. (1) a. Notwithstanding any other provisions of law to the contrary, the county of Saratoga is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose

upon persons occupying hotel or motel rooms in such county. The rates of such tax shall not exceed three percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of a hotel or motel.

b. For the purposes of this section:

(i) "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities; and

(ii) "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(1-a) Notwithstanding any other provisions of law to the contrary, the city of Saratoga Springs, in the county of Saratoga, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. The rates of such tax shall not exceed one percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel.

(1-b) Notwithstanding any other provisions of law to the contrary, the city of Saratoga Springs, in the county of Saratoga, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. The rates of such additional tax shall not exceed two percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel.

(1-c) Notwithstanding any other provisions of law to the contrary, the city of Saratoga Springs, in the county of Saratoga, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. The rates of such additional tax shall not exceed two percent of

the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel.

(2) Such taxes may be collected and administered by the county treasurer or other fiscal officers of Saratoga county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Saratoga and the city of Saratoga Springs imposing the taxes and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the taxes; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the taxes from the person occupying the hotel or motel room, or in respect to nonpayment of the taxes by the person occupying the hotel or motel room, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county and fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the taxes by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such taxes upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any taxes payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any taxes sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously,

illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of taxes due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the taxes, no assessment of additional taxes shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the taxes may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the county of Saratoga and shall be credited to and deposited in the general fund of the county; the net collections therefrom shall thereafter be allocated by the board of supervisors of Saratoga county for the promotion of tourism and other economic development-related purposes provided, however, that the net collections pursuant to subdivision one-a of this section shall be paid to the general fund of the city of Saratoga Springs, the net collections pursuant to subdivision one-b of this section shall be paid to the city of Saratoga Springs convention and tourism bureau for use in marketing the city of Saratoga Springs as a destination for conventions and group tours and the net collections pursuant to subdivision one-c of this section shall be placed in an interest bearing capital reserve account to fund the expansion and renovation of the City Center until such time as the expansion and renovation has been completed, and thereafter shall be placed in a special account which may be drawn upon to offset any operating deficit maintained by the City Center.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this

section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-gg. Hotel or motel taxes in the city of Ithaca. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Ithaca, Tompkins county, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Ithaca by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Ithaca imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same

time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil

practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Ithaca and shall be credited to and deposited in the general fund of the city. The city shall be authorized to retain the necessary revenue, in an amount not to exceed four percent of the total revenue, to defer the expense of the city in administering such tax and the balance of such revenues shall be allocated to the construction, promotion, maintenance, capital improvements, and operations of a conference center in the city of Ithaca and other directly related and supporting activities, including all financial costs and obligations incurred by the city related to the creation of such conference center.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 3 § 1202-gg's

*** § 1202-gg. Hotel or motel taxes in the town of Mount Pleasant.** (1) Notwithstanding any other provisions of law to the contrary, the town of Mount Pleasant, Westchester county, and those portions of such town not located in a village, is hereby authorized and empowered to adopt and amend local laws imposing a tax on persons occupying rooms in hotels or motels in such town, as the legislature has or would have the power and authority to impose, in addition to any other tax authorized and imposed pursuant to this article.

(2) For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served.

(3) The rate of such tax shall not exceed three percent of the per

diem rental rate for each room whether such room is rented on a daily or longer basis.

(4) Such tax may be collected and administered by the commissioner of finance or other fiscal officer of the town of Mount Pleasant by such means and in such manner as other taxes which are now collected and administered by such officer in accordance with the town charter or as otherwise may be provided by such local law.

(5) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Mount Pleasant imposing the tax, and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the commissioner of finance or other fiscal officer of the town of Mount Pleasant shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(6) Such local law may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(7) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada, improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; and

c. Any corporation or association or trust or community chest, fund or

foundation organized and operated exclusively for religious, charitable or educational purposes or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(8) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(9) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund

thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(10) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(11) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the town of Mount Pleasant, and shall be credited to and deposited in the general fund of such town; and may thereafter be allocated at the discretion of the board of legislators of the town of Mount Pleasant for any town purpose.

(12) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(13) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 3 § 1202-gg's

* NB Repealed September 1, 2027

*** § 1202-gg. Hotel or motel taxes in the town of Wallkill. (1)**

Notwithstanding any other provision of law to the contrary, the town of Wallkill, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Wallkill by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local laws.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Wallkill imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or

shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable under this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the

superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed under this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Wallkill and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years

from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-gg's

* NB Repealed September 1, 2027

*** § 1202-gg-1. Hotel or motel taxes in the town of Cornwall. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Cornwall, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Cornwall by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Cornwall

imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay

all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Cornwall and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed August 23, 2029

*** § 1202-gg-2. Hotel or motel taxes in the town of Newburgh. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Newburgh, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Newburgh by such means and in such manner as

other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Newburgh imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however,

that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Newburgh and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 23, 2027

*** § 1202-h. Hotel or motel taxes in Chemung county. (1)**

Notwithstanding any other provision of law to the contrary, the county of Chemung is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem

rental rate for each room provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the Chemung county legislature, or other fiscal officers of Chemung county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Chemung imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the Chemung county treasurer, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in the state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests, and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall

not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Chemung and shall be credited to and deposited in the general fund of the county, thereafter to be allocated for tourist and convention development in the county of Chemung and the surrounding tourist region; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be appropriated annually by the county legislature upon adoption of the budget for the county of Chemung to enhance the general economy of the county of Chemung, its city, towns and villages, and the general economy of the tourist region in which the county of Chemung is located, through the promotion of regional tourism, tourist activities, conventions, trade shows, special events, tourist attractions and other directly

related and supporting activities.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-h's

*** § 1202-h. Hotel or motel taxes in the county of Oswego. ** (1)**

Notwithstanding any other provisions of law to the contrary, the county of Oswego is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying tourist home, inn, hotel or motel rooms in such county. The rates of such tax shall be four percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of such tourist home, inn, hotel or motel or to rooms in such lodging facilities having less than six rentable units.

** NB Effective until January 1, 2027

** (1) Notwithstanding any other provisions of law to the contrary, the county of Oswego is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying a hotel or motel room in such county. For the purposes of this section, the term "hotel" or "motel" shall mean any facility providing lodging on an overnight basis. The rates of such tax shall be four percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

** NB Effective January 1, 2027

(2) Such taxes may be collected and administered by the county treasurer or other fiscal officers of Oswego county by such means and in such manner as other taxes which are now collected and administered by

such officers or as otherwise may be provided by such local law.

** (3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the tourist home, inn, hotel or motel room occupied or to the person entitled to be paid the rent or charge for the tourist home, inn, hotel or motel room occupied for and on account of the county of Oswego imposing the taxes and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the taxes; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the taxes from the person occupying the tourist home, inn, hotel or motel room, or in respect to nonpayment of the taxes by the person occupying the tourist home, inn, hotel or motel room, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county , specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the taxes by the owner or by the person entitled to be paid the rent or charge.

** NB Effective until January 1, 2027

** (3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Oswego imposing the taxes and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the taxes; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the taxes from the person occupying the hotel or motel room, or in respect to nonpayment of the taxes by the person occupying the hotel or motel room, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the taxes by the owner or by the person entitled to be paid the rent or charge.

** NB Effective January 1, 2027

(4) Such local laws may provide for the filing of returns and the

payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such taxes upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any taxes payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any taxes sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state

and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or;

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of taxes due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the taxes, no assessment of additional taxes shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the taxes may be assessed at any time.

** (9) Revenues resulting from the imposition of the tax authorized by this section shall be paid into the treasury of the county of Oswego and shall be credited to and deposited in a special tourism and convention fund and the collections therefrom, excluding the cost of administration, shall thereafter be allocated by the county legislature of Oswego county only for tourism and convention development. The funds

so allocated shall be used for the purpose of promoting Oswego county, its cities, towns and villages, in order to increase convention/trade show and tourist business.

** NB Effective until January 1, 2027

** (9) Revenues resulting from the imposition of the tax authorized by this section shall be paid into the treasury of the county of Oswego and shall be credited to and deposited in a special tourism and convention fund and the collections therefrom, excluding the cost of administration, shall thereafter be allocated by the county legislature of Oswego county only for tourism and convention development. The funds so allocated shall be used for the purpose of promoting Oswego county, its cities, towns and villages, in order to increase convention/trade show and tourist business, and making tourism related capital improvements.

** NB Effective January 1, 2027

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-h's

*** § 1202-hh. Occupancy tax in the village of Briarcliff Manor. (1)**

Notwithstanding any other provision of law to the contrary, the village of Briarcliff Manor, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Briarcliff Manor by such means and in such

manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Briarcliff Manor imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund

or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in

the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Briarcliff Manor and shall be credited to and deposited in the general fund of such village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

*** § 1202-hh-1. Hotel or motel taxes in the town of Chester. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Chester, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Chester by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Chester imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the

owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Chester and shall be credited to and deposited in the general fund of the town. Such

revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed November 22, 2027

*** § 1202-hh-2. Hotel or motel taxes in the village of Cold Spring.** (1) Notwithstanding any other provisions of law to the contrary, the village of Cold Spring, in the county of Putnam, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Cold Spring by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of Cold Spring imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax

from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the

supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made

after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Cold Spring and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed July 21, 2027

*** § 1202-hh-2. Occupancy tax in the village of Nyack. (1)**

Notwithstanding any other provision of law to the contrary, the village of Nyack, in the county of Rockland, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Nyack by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel,

motel or other similar place of public accommodation occupied for and on account of the village of Nyack imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary

purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund,

such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Nyack and shall be credited to and deposited in the general fund of such village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

*** § 1202-hh-3. Hotel or motel taxes in the city of Newburgh. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Newburgh, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as

the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Newburgh by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Newburgh imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue

in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Newburgh and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed July 21, 2027

*** § 1202-hhh. Occupancy tax in the town of Skaneateles. (1)**

Notwithstanding any other provision of law to the contrary, the town of Skaneateles, in the county of Onondaga, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel; provided, however, that if the village of Skaneateles within the town of Skaneateles shall have otherwise imposed a tax under this article, such tax imposed by the town of Skaneateles pursuant to this section shall not apply within the village of Skaneateles. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed five percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Skaneateles by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Skaneateles imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes

were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any

other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than two years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Skaneateles and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-hhh's

* NB Repealed December 31, 2027

*** § 1202-hhh. Occupancy tax in the village of Skaneateles. (1)**

Notwithstanding any other provision of law to the contrary, the village of Skaneateles, in the county of Onondaga, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed five percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal

officer of the village of Skaneateles by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Skaneateles imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such

determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than two years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Skaneateles and shall be credited to and deposited in the general fund of such village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

- * NB There are 2 § 1202-hhh's
- * NB Repealed December 31, 2027

§ 1202-i. Hotel or motel taxes in Schuyler county. (1) Notwithstanding any other provision of law to the contrary, the county of Schuyler is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the Schuyler county legislature, or other fiscal officers of Schuyler county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Schuyler imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same

time as the rent or charge; provided, however, that the Schuyler county treasurer, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be

instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in the state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests, and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Schuyler and shall be credited to and deposited in the general fund of the county, thereafter to be allocated for tourist and convention development in the county of Schuyler and the surrounding tourist region; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of the county of Schuyler, its cities, towns and villages, and the general economy of the tourist region in which Schuyler county is located, through promotion of tourist activities, conventions, track shows, special events, and other directly related and supporting activities; provided, however, that a maximum of seventy-five percent of the revenue derived from the tax may be allocated by the Schuyler county legislature for regional promotion of tourism.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-ii. Hotel or motel taxes in the town of Goshen. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Goshen, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be

applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Goshen by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Goshen imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Goshen and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-ii's

* NB Repealed August 23, 2027

*** § 1202-ii. Hotel or motel taxes in the village of Goshen. (1)**
Notwithstanding any other provisions of law to the contrary, the village of Goshen, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and

authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Goshen by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of Goshen imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Goshen and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-ii's

* NB Repealed August 23, 2027

*** § 1202-iii. Hotel or motel taxes in the town of Highlands. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Highlands, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Highlands by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Highlands imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first

deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Highlands and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed October 16, 2027

*** § 1202-j. Hotel or motel taxes in Otsego county.** (1) Notwithstanding any other provisions of law to the contrary, the county of Otsego is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis.

The rates of such tax shall not exceed six percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Otsego county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Otsego imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room,

as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such

final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the

filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Otsego county and shall be credited to and deposited in the general fund of the county; the net collections therefrom shall thereafter be allocated by the board of representatives of Otsego county in an amount not to exceed two hundred thousand dollars for the promotion, planning and development of tourism in Otsego county and the remaining net collections therefrom may be allocated by the board of representatives of Otsego county for any county purpose. The revenues collected and paid into the general fund of the county shall be those revenues remaining after deducting the reasonable cost of Otsego county administering the tax imposed by this section. Such reasonable cost of administration shall be determined by the board of representatives of Otsego county.

(10) Each enactment of a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-j's

*** § 1202-j. Hotel and motel taxes in Sullivan county. (1)**

Notwithstanding any other provision of law to the contrary, the county of Sullivan is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county.

For the purposes of this section, the term "hotel" or "motel" shall

mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five per cent of the per diem rental rate for each room, provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the county treasurer of the county of Sullivan by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Sullivan imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

- a. The state of New York, or any public corporation (including a

public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax authorized by this section shall be paid into the treasury of the county of Sullivan and shall be credited to and deposited in the general fund of the county; thereafter to be allocated and paid to a not-for-profit corporation under contract with the county for the promotion of tourism in the county. Provided, however, that such local law shall provide that the county shall be authorized to retain up to a maximum of fifteen percent of such revenue to defer the necessary expenses of the county in administering such tax.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-j's

**** § 1202-j. Hotel or motel taxes in Chautauqua county. * (1)**

Notwithstanding any other provision of law to the contrary, the county of Chautauqua is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any professionally managed real property providing lodging on an overnight basis and shall include cottages, apartments, condominiums and those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room provided, however, that such tax shall not be applicable to a permanent resident of such rooms in lodging facilities having less than five rentable units. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

* NB Effective until November 30, 2027

* (1) Notwithstanding any other provision of law to the contrary, the county of Chautauqua is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any professionally managed real property providing lodging on an overnight basis and shall include cottages, apartments, condominiums and those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room provided, however, that such tax shall not be

applicable to a permanent resident of such rooms in lodging facilities having less than five rentable units. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

* NB Effective November 30, 2027

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Chautauqua county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Chautauqua imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time, the registration of all operators within the terms of such local law and any other provisions deemed necessary by the legislature of Chautauqua county for the implementation and enforcement of such a tax provided such additional provisions are consistent with the terms of this section.

(5) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other

political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of the state authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

* (9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Chautauqua to benefit tourism, recreation, and related economic development. The revenue derived from such tax, after deducting the amount provided for administering such tax and such programs as so authorized by local law, shall be allocated as follows:

a. Three-fifths of such revenues shall be credited to and deposited in a special tourism and convention fund, thereafter to be allocated by the county government of Chautauqua county through the county budget process solely for the purposes of enhancing and promoting tourism, conventions, trade shows, special events and other directly related and supporting

activities including, but not limited to, programs to improve the aesthetic qualities of the county; to improve infrastructure related to tourism, conventions and trade shows; to develop, operate and maintain parks, recreational facilities and tourist attractions; and such other programs as authorized by local law; provided, however, that at least one-half of such amount shall be allocated for the official tourism promotion agency of the county for marketing, advertising, and promoting the county.

b. Any amount of revenues derived from such tax over three-fifths of such revenues shall be credited to and deposited into a special lake management and enhancement fund, thereafter to be allocated by the county government of Chautauqua county through the county budget process solely for the purposes of maintaining and enhancing the usability and attractiveness of the lakes of Chautauqua county for residents and visitors, including, but not limited to, environmentally responsible control, treatment, and/or removal of invasive or nuisance submerged aquatic vegetation; reduction of harmful algae blooms; shoreline maintenance and cleanup; the enhancement of lakes for fishing, boating and other recreational activities; reduction of watershed erosion, sedimentation and nutrient loading; and such other programs as authorized by local law consistent with such purposes; provided, however, that at least one-half of such amount shall be allocated for activities that control, treat, and/or remove invasive or nuisance submerged aquatic vegetation, reduce harmful algae blooms, or provide shoreline cleanup.

c. Such local laws shall provide that the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax and such programs.

d. The county may, in its discretion, as a condition of receiving funding, require recipients of such funding to meet specified performance requirements; meet maintenance-of-effort requirements; provide matching contributions; comply with reasonable limitations on fund balances; comply with appropriate accounting, performance, and

reporting requirements, including reporting of time and material costs, GPS tracking data, equipment utilization information, and similar information; cooperate and coordinate with the county and with other organizations and entities receiving funding; and impose similar requirements and restrictions on recipients of such funding.

* NB Effective until November 30, 2027

* (9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Chautauqua and shall be credited to and deposited in a special tourism and convention fund, thereafter to be allocated by the county legislature of Chautauqua county through the county budget process for tourism and convention development in such county. The revenue derived from such tax, after deducting the amount provided for administering such tax as so authorized by local law, shall be allocated only for the purposes of enhancing and promoting Chautauqua county, its cities, towns and villages through the promotion of tourism, conventions, trade shows, special events and other directly related and supporting activities including, but not limited to, programs to improve the aesthetic qualities of the county; to enhance the environment; to improve infrastructure related to tourism, conventions and trade shows; to develop, operate and maintain parks, recreational facilities and tourist attractions; and such other programs as authorized by local law. Such local laws shall provide that the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax.

* NB Effective November 30, 2027

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

** NB There are 3 § 1202-j's

*** § 1202-jj. Hotel or motel taxes in the town of New Windsor. (1)**

Notwithstanding any other provisions of law to the contrary, the town of New Windsor, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition

to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of New Windsor by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of New Windsor imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with

section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax

confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of New Windsor and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

* NB Repealed August 28, 2027

*** § 1202-jj. Hotel or motel taxes in the town of Clarkstown. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Clarkstown, in the county of Rockland, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Clarkstown by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Clarkstown imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a

party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Clarkstown and

shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 27, 2027

* NB There are 11 § 1202-jj's

*** § 1202-jj. Hotel or motel taxes in Columbia county. (1) a.**

Notwithstanding any other provisions of law to the contrary, the county of Columbia is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfasts", inns and tourist homes.

b. (i) The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days. Notwithstanding any other provision of this section, any city in the county of Columbia imposing hotel or motel taxes pursuant to the authority of this subpart shall have the prior right to impose such taxes in such city, up to the maximum rate of tax authorized for such city in this subpart; and the rate of tax authorized to be imposed by the county pursuant to the authority of this section in any such city imposing such a tax shall be reduced by the rate of such city's tax.

(ii) Provided further that, any such city tax, to the extent that it would require a reduction in the county's tax rate imposed pursuant to

this section in such city, shall not become effective before the commencement of the county's next succeeding fiscal year and then only if the city shall have given notice to such county of its imposition of such tax at least six months prior to the commencement of such fiscal year, provided, however, that the local legislative body of such county may waive the requirement of such notice and postponement of the effective date of such city tax.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Columbia county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Columbia imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to non-payment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other

political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such

determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Columbia and shall be credited to and deposited in the general fund of the county thereafter to be used for any lawful purpose.

(10) Each enactment of a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

*** § 1202-jj. Hotel or motel taxes in the city of Binghamton. (1)**

Notwithstanding any other provision of law to the contrary, the city of Binghamton, Broome county, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Binghamton by such means and in such manner as other taxes, which are now collected and administered by such officer, or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Binghamton imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the

owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholders or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence the legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Binghamton and shall be credited to and deposited in the general fund of the city. Such

revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 11 1202-jj's

*** § 1202-jj. Hotel or motel taxes in the village of Greenwood Lake.**

(1) Notwithstanding any other provisions of law to the contrary, the village of Greenwood Lake, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Greenwood Lake by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room

occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of Greenwood Lake imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not

all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a

justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Greenwood Lake and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

* NB Repealed November 22, 2027

*** § 1202-jj. Hotel or motel taxes in the village of South Blooming Grove.** (1) Notwithstanding any other provisions of law to the contrary, the village of South Blooming Grove, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in

a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of South Blooming Grove by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of South Blooming Grove imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious,

charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such

officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of South Blooming Grove and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

* NB Repealed November 22, 2027

*** § 1202-jj. Hotel or motel taxes in the town of Wawayanda. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Wawayanda, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an

overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Wawayanda by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Wawayanda imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other

political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such

determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Wawayanda and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

* NB Repealed November 22, 2027

*** § 1202-jj. Hotel or motel taxes in the city of Cortland. (1)**

Notwithstanding any other provision of law to the contrary, the city of

Cortland, Cortland county, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Cortland by such means and in such manner as other taxes, which are now collected and administered by such officer, or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Cortland imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon

any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholders or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence the legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme

court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Cortland and shall be credited to and deposited in the general fund of the city. The city shall be authorized to retain the necessary revenue, in an amount not to exceed four percent of the total revenue, to defer the expense of the city in administering such tax and the balance of such revenues shall be allocated to the promotion of tourism, cultural programs, parks and recreation, and the critical infrastructure and capital improvements

necessary to support those activities, including all financial costs and obligations incurred by the city related to the creation of such events and activities as so determined by the city of Cortland Common Council.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 11 § 1202-jj's

*** § 1202-jj. Hotel or motel taxes in the town of Ramapo. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Ramapo, in the county of Rockland, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Ramapo by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Ramapo imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in

this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was

not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Ramapo and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

* NB Repealed November 22, 2027

*** § 1202-jj. Occupancy tax in the town of Ossining. (1)**

Notwithstanding any other provision of law to the contrary, the town of Ossining, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Ossining by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local laws.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Ossining imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum

sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Ossining and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or

circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

*** § 1202-jj. Occupancy tax in the of village of Coxsackie. (1)**

Notwithstanding any other provisions of law to the contrary, the village of Coxsackie, in the county of Greene, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any hotel or motel providing lodging on an overnight basis. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall be four percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in any hotel or motel providing lodging on an overnight basis for at least thirty consecutive days.

(2) Such taxes may be collected and administered by the village treasurer or other fiscal officers of the village of Coxsackie by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of any hotel or motel providing lodging on an overnight basis occupied or to the person entitled to be paid the rent or charge for the hotel or motel providing lodging on an overnight basis occupied for and on account of the village of Coxsackie imposing the taxes and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the taxes; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the taxes from the person occupying the hotel or motel providing lodging on an overnight basis or in respect to nonpayment of the taxes by the

person occupying the hotel or motel providing lodging on an overnight basis, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the village treasurer or other fiscal officers of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the taxes by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such taxes upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; and

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any taxes payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the

giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any taxes sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of taxes due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the taxes, no assessment of additional taxes shall be made after the expiration of more than three years from the date of the

filing of a return, provided, however, that where no return has been filed as provided by law the taxes may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Cossackie and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 11 § 1202-jj's

* NB Repealed December 31, 2027

*** § 1202-k. Hotel or motel taxes in Montgomery county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Montgomery is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", "inn" and "tourist" facilities and the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel more than thirty consecutive days. The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Montgomery county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of

Montgomery imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in

this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such

proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Montgomery county and shall be credited to and deposited in a special tourism/convention account, and the collections therefrom, excluding the cost of administration, shall thereafter be allocated by the board of supervisors of Montgomery county to enhance and develop the general economy of the county of Montgomery and the towns therein through promotion of tourism, conventions, trade shows, and other directly related and supporting activities.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-k's

*** § 1202-k. Hotel or motel taxes in the county of Rockland. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Rockland is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, as the legislature has or would have the power and authority to impose upon persons occupying rooms in hotels or motels in such county. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. Such tax shall be imposed at a rate or rates not to exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such tax may be collected and administered by the commissioner of finance or other fiscal officer of the county of Rockland by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the county charter or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Rockland imposing the tax, and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the commissioner of finance or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada, improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious,

charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; and

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall

not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the county of Rockland and shall be credited to and deposited in the general fund of the county; and may thereafter be allocated at the discretion of the board of legislators of the county of Rockland for any county purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-k's

*** § 1202-kk. Hotel or motel taxes in the city of Buffalo. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Buffalo, in the county of Erie, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to

any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the commissioner of administration, finance, policy and urban affairs of the city of Buffalo by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Buffalo imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the commissioner of administration, finance, policy and urban affairs of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and

responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Buffalo and shall be credited to and deposited in the general fund of the city. Such revenues shall be used as follows: twenty-five percent of such revenue from this tax shall be allocated to support organizations dedicated to maintenance of the city-owned public realm and city-owned parking facilities in downtown as well as public safety initiatives undertaken

by the Buffalo police department and other organizations in downtown, and seventy-five percent shall be allocated for capital improvements to city-owned cultural facilities citywide, the city-owned public realm in downtown, and city-owned professional sporting venues.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-kk's

* NB Repealed December 31, 2027

*** § 1202-kk. Hotel or motel taxes in the village of Chester. (1)**

Notwithstanding any other provisions of law to the contrary, the village of Chester, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Chester by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of

Chester imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay

all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Chester and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-kk's

* NB Repealed October 16, 2027

*** § 1202-kk. Occupancy tax in the town of Dickinson. (1)**

Notwithstanding any other provision of law to the contrary, the town of Dickinson, in the county of Broome, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Dickinson by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local laws.

(3) Such local laws may provide that any taxes imposed shall be paid

by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Dickinson imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to

the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Dickinson and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-kk's

* NB Repealed September 1, 2027

*** § 1202-kk. Occupancy tax in the city of Oneonta.** (1) Notwithstanding any other provision of law to the contrary, the city of Oneonta, in the county of Otsego, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of such building which is rentable or consisting of rentable units providing lodging on an overnight basis for guests. The term "hotel" includes an apartment hotel, a motel, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or not meals are served. The rate of such tax shall not exceed six percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Oneonta by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied for and on account of the city of Oneonta imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any

action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such

final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the

filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Oneonta and shall be credited to and deposited in the general fund of the city. Such revenues may be used to support municipal services, infrastructure and other essential expenditures as determined by the common council of the city of Oneonta.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 4 § 1202-kk's

* NB Repealed December 31, 2027

*** § 1202-kkk. Hotel or motel taxes in the city of Mount Vernon. (1)** Notwithstanding any other provision of law to the contrary, the city of Mount Vernon, Westchester county, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include, but not be limited to, hotels, motels, tourist homes, motel courts, bed-and-breakfast establishments, short-term rentals, vacation rentals, airbnbs, clubs or similar facilities, whether or not meals are served to guests or residents thereof, and/or a location that is otherwise made available for transient lodging accommodation for rent directly by the owner or through an agent, operator or company. The rates of such tax shall not exceed five and eight hundred seventy-five thousandths percent

of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Mount Vernon by such means and in such manner as other taxes, which are now collected and administered by such officer, or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Mount Vernon imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from

taxation; and

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholders or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence the legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition

precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than two years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Mount Vernon and shall be credited to and deposited in the general fund of the city. Such revenues shall be retained to defer the expense of the city in administering the tax pursuant to this section and the balance of such revenues shall be used within the city of Mount Vernon as so determined by the city of Mount Vernon city council.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

- * NB There are 2 § 1202-kkk's
- * NB Repealed December 31, 2027

*** § 1202-kkk. Occupancy tax in the town of Cheektowaga. (1)**

Notwithstanding any other provision of law to the contrary, the town of Cheektowaga, in the county of Erie, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Cheektowaga by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local laws.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Cheektowaga imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the

rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of

the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with

intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Cheektowaga and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-kkk's

* NB Repealed December 31, 2027

*** § 1202-l. Hotel and motel taxes in Ulster county. (1)**

Notwithstanding any other provision of law to the contrary, the county of Ulster is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county.

For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units that provides lodging on an overnight basis.

The rates of such tax imposed upon persons occupying hotel or motel rooms shall not exceed four per cent of the per diem rental rate for each room, provided, however, such tax shall not be applicable to a

permanent resident of such hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the commissioner of finance of the county of Ulster by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Ulster imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously,

illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax authorized by this section shall be paid into the treasury of the county of Ulster and shall be credited to and deposited in the general fund of the county.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-1's

*** § 1202-1. Hotel or motel taxes in the city of Canandaigua. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Canandaigua is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis

and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Canandaigua by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Canandaigua imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another

state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum

sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Canandaigua and shall be credited to and deposited in the general fund of the city; and the local law shall provide that the city shall be authorized to retain the necessary revenue to defer the expense of the city in administering such tax and the balance of such revenues shall be allocated to enhance the general economy of the city of Canandaigua.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-1's

*** § 1202-1. Hotel or motel taxes in Niagara Falls.** (1) Notwithstanding any other provisions of law to the contrary, the city of Niagara Falls is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax in addition to any tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose on persons occupying hotel and motel rooms in such city. The rate of such tax shall be six per centum (6%) per day of the rent or charge for each room; provided, however, such tax shall not be applicable to a permanent resident of a hotel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the comptroller of the city of Niagara Falls by such means and in such manner as other taxes which are now collected and administered by such officers as provided by local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel room occupied or to the person entitled to be paid the rent or charge for the hotel room occupied for and on account of the city of Niagara Falls imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel room, or in respect to nonpayment of the tax by the person occupying the hotel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the city comptroller of the city of Niagara Falls shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time. Such returns shall be filed within twenty days from the expiration of the period covered.

(5) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. The United Nations or other world-wide international organization of which the United States is a member; and

d. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such

proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceedings in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this act shall be paid into the treasury of the city of Niagara Falls and shall be credited to and deposited in the general fund account of such city and shall be used only for the promotion of convention activities and tourism as follows: (a) from the first four per centum (4%), eighty percent of such revenue from this tax shall be allocated and paid to a not-for-profit corporation under contract with the county for the promotion of tourism in the county; fifteen percent of such revenue shall be retained by the city of Niagara Falls for any city purpose; and the remaining five percent of said first four per centum (4%) of revenue

shall be retained by the city of Niagara Falls for administration and collection costs; (b) the additional one percentum (1%) of such revenue from this tax first authorized pursuant to chapter two hundred forty-seven of the laws of two thousand six shall be dedicated to the continuation of a trolley service for the purpose of transporting guests of hotels and motels to area tourism attractions; and (c) an additional one per centum (1%) of revenue shall be dedicated to the operation of the Discover Niagara shuttle. The terms "convention activities" and "tourism" may be defined by a resolution of the city council of the city of Niagara Falls.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-l's

*** § 1202-11. Occupancy tax in the town of Clinton.** (1) Notwithstanding any other provisions of law to the contrary, the town of Clinton, in the county of Dutchess, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", "conference center", "agricultural event venue" and "tourist" facilities. The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Clinton by such means and in such manner as other taxes which are now collected and administered by such officer or as

otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Clinton imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise

attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving

of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Clinton and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 8 § 1202-ll's

*** § 1202-11. Occupancy tax in the city of Kingston. (1)**

Notwithstanding any other provision of law to the contrary, the city of Kingston, in the county of Ulster, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of such building which is rentable or consisting of rentable units providing lodging on an overnight basis for guests. The term "hotel" includes an apartment hotel, a motel, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is

rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Kingston by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied for and on account of the city of Kingston imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from

taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Kingston and shall be credited to and deposited in the general fund of the city. Such revenues may be used to support municipal services, infrastructure and other essential expenditures as determined by the common council of the city of Kingston.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 8 § 1202-11's

* NB Repealed December 31, 2029

*** § 1202-11. Occupancy tax in the town of Amherst.** (1) Notwithstanding any other provision of law to the contrary, the town of Amherst, in the county of Erie, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed two and one-half percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Amherst by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local laws.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Amherst imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place

of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty

consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such

proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Amherst and shall be credited to and deposited in the general fund of the town. Seventy-five percent of such revenues shall be used for any lawful purposes and twenty-five percent of such revenues shall be used for capital improvements at town-owned facilities related to youth and amateur sports, health and wellness activities, community centers, parks, and playgrounds.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 8 § 1202-ll's

* NB Repealed December 31, 2029

*** § 1202-ll. Hotel or motel taxes in the town of Monroe. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Monroe, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be

applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Monroe by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Monroe imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada, improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Monroe and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 8 § 1202-11's

* NB Repealed August 21, 2029

*** § 1202-11. Hotel or motel taxes in the town of Gardiner. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Gardiner, in the county of Ulster, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon

persons occupying hotel or motel rooms in such town. For the purposes of this section the term "hotel" or "motel" shall mean any facility or portion thereof where single rooms or suites of rooms are rented or hired out to be occupied or which are occupied by transient guests who are lodged overnight, with or without meals, for sleeping purposes for compensation, whether the compensation be paid directly or indirectly and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Gardiner by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Gardiner imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with

section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax

confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Gardiner and shall be credited to and deposited in the general fund of the town. Such revenues may be used to support municipal services, infrastructure, and other essential expenditures as determined by the town board.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

- * NB There are 8 § 1202-ll's
- * NB Repealed August 21, 2029

*** § 1202-ll. Hotel, motel or beach club taxes in the village of Atlantic Beach.** (1) Notwithstanding any other provisions of law to the contrary, the village of Atlantic Beach, in the county of Nassau, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel, motel rooms or beach clubs in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The term "beach club" shall mean a facility formed, organized or operated by any person, firm or corporation, located on or contiguous to an ocean beach, permitting sunbathing, swimming and other allied recreation activities, including such uses operated by a hotel, cooperative complex or other entity. The rates of such tax shall not exceed three percent of the per diem rental rate for each room or beach club facility, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Atlantic Beach by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel, motel room or beach club occupied or to the person entitled to be paid the rent or charge for the hotel, motel room or beach club occupied for and on account of the village of Atlantic Beach imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person

entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel, motel room or beach club, or in respect to nonpayment of the tax by the person occupying the hotel, motel room or beach club, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable under this section shall be reviewable for error, illegality or

unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Atlantic Beach and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 8 § 1202-ll's

* NB Repealed December 31, 2029

*** § 1202-ll. Occupancy tax in the town of Rhinebeck. (1)**

Notwithstanding any other provision of law to the contrary, the town of Rhinebeck, in the county of Dutchess, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Rhinebeck by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local laws.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public

accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Rhinebeck imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise

attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund

therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Rhinebeck and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 8 § 1202-11's

* NB Repealed December 31, 2029

*** § 1202-11. Hotel or motel taxes in the county of St. Lawrence. (1)** Notwithstanding any other provisions of law to the contrary, the county

of St. Lawrence is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, as the legislature has or would have the power and authority to impose upon persons occupying rooms in hotels or motels in such county. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. Such tax shall be imposed at a rate or rates not to exceed five percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such tax may be collected and administered by the commissioner of finance or other fiscal officer of the county of St. Lawrence by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the county charter or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of St. Lawrence imposing the tax, and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the commissioner of finance or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon the following:

a. The state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada, improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; and

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a

surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the county of St. Lawrence and shall be credited to and deposited in the general fund of the county; and may thereafter be allocated at the discretion of the board of legislators of the county of St. Lawrence for any county purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 8 § 1202-ll's

§ 1202-m. Hotel or motel taxes in Livingston county. (1)

Notwithstanding any other provisions of law to the contrary, the county of Livingston is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least fourteen consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Livingston county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Livingston imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax

from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of

the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with

intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Livingston county and shall be credited to and deposited in the general fund of such county and shall be available thereafter for the promotion of tourism and tourist attractions in Livingston county, as well as the promotion of tourism and tourist attractions of the larger region of which Livingston county is a part provided that funding for regional promotion shall not exceed seventy-five percent of the revenue received hereunder in any year and that not more than five percent of such revenue shall be used for the cost of administering such tax. Such promotion may be carried out by an appropriate organization or organizations as designated by the Livingston county board of supervisors.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-mm. Hotel or motel taxes in the city of Beacon. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Beacon, in the county of Dutchess, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an

overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Beacon by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Beacon imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other

political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such

determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Beacon and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed August 23, 2029

§ 1202-n. Hotel or motel taxes in Rensselaer county. (1)

Notwithstanding any other provisions of law to the contrary, the county of Rensselaer is hereby authorized and empowered to adopt and amend

local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least fourteen consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Rensselaer county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Rensselaer imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or

shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and

approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Rensselaer county and shall be credited to and deposited in the general fund of such county and shall be available thereafter for any county purpose.

(10) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act

and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-nn. Hotel or motel taxes in the city of Poughkeepsie. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Poughkeepsie, in the county of Dutchess, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Poughkeepsie by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Poughkeepsie imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief

fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the

local laws shall be paid into the treasury of the city of Poughkeepsie and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed August 23, 2029

*** § 1202-nnn. Occupancy tax in the town of Cortlandt. (1)**

Notwithstanding any other provision of law to the contrary, the town of Cortlandt, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, motel, or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Cortlandt by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Cortlandt imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in

respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this

section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper

fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Cortlandt and shall be credited to and deposited in the general fund of such town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-nnn's

*** § 1202-nnn. Hotel or motel taxes in the town of Poughkeepsie. (1)**
Notwithstanding any other provisions of law to the contrary, the town of Poughkeepsie, in the county of Dutchess, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis and shall include those

facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Poughkeepsie by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Poughkeepsie imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in

the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Poughkeepsie and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 27, 2027

* NB There are 2 § 1202-nnn's

*** § 1202-nnn. Occupancy tax in the city of Syracuse. (1)**

Notwithstanding any other provision of law to the contrary, the city of Syracuse, in the county of Onondaga, is hereby authorized and empowered

to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed two percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Syracuse by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the city of Syracuse imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than two years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Syracuse and shall be credited to and deposited in the general fund of such city.

Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-nnn's

* NB Repealed December 31, 2029

*** § 1202-o. Hotel and motel taxes in Suffolk county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Suffolk is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, (i) "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", inns, cabins, cottages, campgrounds, tourist homes and convention centers, and (ii) "cultural programs and activities" shall mean events, forums, or actions of benefit to the general public that are thematically related to art, music, performing arts or music, or historic or environmental preservation or education.

The rates of such tax shall not exceed five and one-half percent of the per diem rental rate for each room, provided, however, that such tax shall not be applicable to a permanent resident of such hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Suffolk county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Suffolk imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local law may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer period of time.

(5) Such local law shall provide for the county of Suffolk to enter into a contract with a tourism promotion agency to administer programs designed to develop, encourage, solicit and promote convention business and tourism within the county. The promotion of convention business and tourism shall include any service, function or activity, whether or not performed, sponsored or advertised by the tourism promotion agency with the intent to attract transient guests to the county.

(6) Such local law shall provide that all revenues resulting from the imposition of the tax payable hereunder shall be paid into the treasury of the county of Suffolk and shall be distributed by the county proportional to the annual amount due under the following formula: (a) four million five hundred thousand dollars per fiscal year, shall be delivered to a not-for-profit tourism promotion agency for the purpose of tourism promotion in the county of Suffolk pursuant to a contract in

accordance with the provisions of subdivision five of this section and subject to an awarding of contract through request for proposal; (a-1) one hundred fifty thousand dollars per fiscal year shall be delivered to a not-for-profit agency that represents the hospitality sector to be used to promote and support the hospitality sector in the county of Suffolk; (b) two million eight hundred fifty thousand dollars per fiscal year shall be utilized by the county of Suffolk in support of cultural programs and activities relevant to the continuation and enhancement of the tourism industry, provided that one million six hundred thousand dollars per fiscal year shall be utilized in support of cultural programs and activities in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown; one million dollars per fiscal year shall be utilized in support of cultural programs and activities in the towns of Riverhead, Southold, Shelter Island, Southampton and East Hampton and two hundred fifty thousand dollars per fiscal year shall fund cultural grant programs administered by the county department of economic development and planning; (c) one million five hundred thousand dollars per fiscal year shall be utilized by the county of Suffolk for the support of any museum accredited by the American Association of Museums, which is located in such county's first dedicated park and is also listed on the National Register of Historic Places; (d) one million dollars per fiscal year shall be utilized by the county of Suffolk for the support of other museums, and historical societies, historic residences and historic birthplaces; (d-1) two hundred fifty thousand dollars per fiscal year shall be utilized by the county of Suffolk for program support of a not-for-profit museum organization that manages a National Register of Historic Places site in Suffolk county that has been named a National Treasure, is part of a National Recreational Trail and is a New York state historic site; (e) two million five hundred thousand dollars per fiscal year shall be utilized by the county of Suffolk for the care, maintenance, and interpretation for the general public of the historic structures, sites and unique natural areas that are managed by the Suffolk county department of parks and recreation for sites and activities that are open to tourists on a regular and predictable basis; (f) two hundred fifty thousand dollars per fiscal year shall be utilized by the county of Suffolk for the promotion of the county of Suffolk as a film friendly location through the county

department of economic development and planning; (f-1) three million two hundred fifty thousand dollars per fiscal year shall be deposited into the general fund of the county of Suffolk to be utilized for general park purposes; (g) five hundred thousand dollars per fiscal year shall be utilized by the county of Suffolk for regional marketing and promotion provided that two hundred fifty thousand dollars is delivered to a Long Island regional commercial airport, designated as an official metro airport that does not operate in the same airspace as airports located in New York city and two hundred fifty thousand dollars to an east end tourism agency which the county of Suffolk contracts with to administer programs designed to develop, encourage, solicit and enhance business and tourism on the east end of the county of Suffolk; (g-1) two hundred fifty thousand dollars per fiscal year shall be utilized by the county of Suffolk for program support of a not-for-profit organization that manages and owns the first lighthouse built in New York, a national register of historic places site in Suffolk county that has been named a national historic landmark and is a New York state historic site; and (h) all remaining revenue collected by the county of Suffolk shall be deposited into a special fund to be designated as the "Suffolk County Infrastructure Fund," to be created by said county therefore separate and apart from any other funds and accounts of the county. Monies in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law, and, pending expenditure, may be invested in the manner provided by section ten of the general municipal law. Any interest earned or capital gain realized on monies deposited shall accrue to and become part of the fund. In no event shall monies deposited in the fund be transferred to any other fund except as set forth in this subdivision. Monies in such fund may be appropriated from and transferred or expended in any fiscal year for the planning, design, and construction of projects that enhance tourism that meet one of the following criteria: (i) a convention center and surrounding infrastructure, including but not limited to, utilities, underground infrastructure, wastewater improvements, parking facilities, traffic improvements, pedestrian access and multi-modal projects, community impact projects, transportation facilities and related improvements and to repay any indebtedness or obligations incurred, pursuant to local finance law, for these purposes; and (ii) except that from January

first, two thousand twenty-six through December thirty-first, two thousand twenty-nine remaining revenue may also be expended on such purposes as capital improvements of (A) historic designated structures, parks, marinas, golf courses and campgrounds used to promote tourism on county-owned properties; (B) not-for-profit owned accredited museums and performance venues; (C) the Smith Point and Ponquogue bridge reconstruction projects; (D) Shinnecock canal infrastructure; (E) new or expanded wastewater treatment infrastructure or shoreline protection and coastal resiliency projects that protects and enhances water quality, improves coastal resiliency, and preserves or expands occupancy capacity at beach destinations; provided during such period the Suffolk county infrastructure fund retains a minimum balance of five million dollars. As applicable, funds disbursed for construction shall comply with article eight of the labor law; and (i) the funding amounts identified in paragraphs (a) through (g-1) of this subdivision shall be increased by one percent over the prior fiscal years' funding each fiscal year, except that the funding for the support of any museum accredited by the American Association of Museums, which is located in such county's first dedicated park and is also listed on the National Register of Historic Places; for the support of a not-for-profit museum organization that manages a National Register of Historic Places site in Suffolk county that has been named a National Treasure, is part of a National Recreational Trail and is a New York state historic site; and for the support of a not-for-profit organization that manages and owns the first lighthouse built in New York shall be increased by a percentage over the prior years' funding each fiscal year to be determined by resolution of the Suffolk county legislature by a minimum of one percent but not to exceed five percent in any given fiscal year.

In the event that revenues resulting from the imposition of the tax payable hereunder are insufficient to fund according to the amounts identified in paragraphs (a) through (g-1) of this subdivision, the county of Suffolk shall utilize funds from the Suffolk County Infrastructure Fund to fund according to the amounts identified in paragraphs (a) through (g-1) of this subdivision, however, if the funds from the Suffolk County Infrastructure Fund are still insufficient to provide funding according to paragraphs (a) through (g-1), distributions

set forth in paragraphs (a) through (g-1) of this subdivision shall be reduced on a proportional basis.

Schedules of availability of all historic and cultural activities and events funded from any part of these revenues shall be provided to the aforementioned tourism promotion agency which is contracted with by the county of Suffolk so as to enhance tourism promotion and tourist visitation.

Annually, the department of economic development and planning of the county of Suffolk shall submit, to the county executive and the county legislature of such county, a report on such department's progress on the promotion of the county of Suffolk as a film friendly location, and annual statistics of the revenue generated pursuant to paragraph (f) of this subdivision.

(7) Such local law shall provide for the imposition of a hotel or motel tax in perpetuity.

(8) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

(a) The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

(b) The United States of America, insofar as it is immune from taxation;

(c) Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(9) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

(a) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

(b) At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(10) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(11) Except in the case of wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(12) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 §1202-o's

*** § 1202-o. Hotel or motel taxes in the city of Lockport, Niagara county.** (1) Notwithstanding any other provisions of law to the contrary, the city of Lockport, Niagara county is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", inns, and tourist homes. The rates of such tax shall not exceed five percent (5%) of the per diem rental rate for each room, provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least fourteen consecutive days.

(2) Such tax may be collected and administered by the city treasurer or other fiscal officers of the city of Lockport by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Lockport imposing the tax and that such owner or person entitled to be paid the

rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the city treasurer or other fiscal officers of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay

all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Lockport and shall be credited to and deposited in the general fund of the city, thereafter to be allocated at the discretion of the common council of the city of Lockport for the purposes of tourism and economic development; provided, however, that such local laws shall provide that the city shall be authorized to retain the necessary revenue to defer necessary expenses of the city in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of the city of Lockport as follows: (a) from the first four percent (4%), twenty-five percent of such revenue from this tax shall be used for the promotion of community and economic development in the city of Lockport; and the remaining seventy-five percent of the first four percent (4%) of said revenue shall be allocated and paid to a not-for-profit corporation under contract with the county for the promotion of tourism in the county; (b) the additional one percent (1%) of such revenue from this tax shall be dedicated to the operation of the discover Niagara shuttle.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 §1202-o's

*** § 1202-o. Hotel or motel taxes in Seneca county.** (1) Notwithstanding any other provision of law to the contrary, the county of Seneca is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the Seneca county treasurer, or other fiscal officers of Seneca county by such means in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Seneca imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the Seneca county treasurer, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by

the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in the state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests, and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Seneca county and shall be credited to and deposited in the general fund of the county and shall be

made available thereafter for the promotion of tourism and tourist attractions in Seneca county and any other directly related or supporting activities as related to tourism including, but not limited to, programs to improve public infrastructures; to develop, operate and maintain public parks and recreational facilities; to maintain and enhance the water resources of Seneca county, including lakes and tributary streams; and for environmental conservation. Such promotion may be carried out by an appropriate organization or organizations as designated by the Seneca county board of supervisors. No more than five percent of such revenues shall be used for the cost of administering the provisions of this subdivision within the Seneca county treasurer's office.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 §1202-o's

*** § 1202-oo. Occupancy tax in the city of Utica.** (1) Notwithstanding any other provision of law to the contrary, the city of Utica, in the county of Oneida, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of such building which is rentable or consisting of rentable units providing lodging on an overnight basis for guests. The term "hotel" includes an apartment hotel, a motel, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or

not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Utica by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied for and on account of the city of Utica imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which

may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Utica and shall be credited to and deposited in the general fund of the city. Such revenues may be used to support municipal services, infrastructure and other essential expenditures as determined by the common council of the city of Utica.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of

this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

§ 1202-p. Hotel or motel taxes in Madison county. (1) Notwithstanding any other provisions of law to the contrary, the county of Madison is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. This section shall also apply to boarding houses, cottages, motor courts or clubs, bunkhouses, lodges, trailers and campers which have been established upon a site by the owner or user and campsites.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Madison county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Madison

imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in

this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such

proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Madison county and shall be credited to and deposited in the general fund of such county and shall be available thereafter for the promotion of tourism and tourist attractions in Madison county; provided, however, that a portion of such revenue may be specifically allocated to the expense of the county in administering such tax.

(10) Each enactment of a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-pp. Occupancy tax in the city of Rome.** (1) Notwithstanding any other provision of law to the contrary, the city of Rome, in the county of Oneida, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of such building which is rentable or consisting of rentable units providing lodging on an overnight basis for guests. The term "hotel" includes an

apartment hotel, a motel, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Rome by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied for and on account of the city of Rome imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another

state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme

court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Rome and shall be credited to and deposited in the general fund of the city. Such revenues may be used to support municipal services, infrastructure and other essential expenditures as determined by the common council of the city of Rome.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years

from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

*** § 1202-q. Hotel and motel taxes in Nassau county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Nassau is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", inns, cabins, cottages, campgrounds, tourist homes and convention centers.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided, however, that such tax shall not be applicable to a permanent resident of such hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Nassau county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Nassau

imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local law may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer period of time.

(5) Such local law shall provide for the county of Nassau to enter into a contract with a tourism promotion agency to administer programs designed to develop, encourage, solicit and promote convention business and tourism within the county. The promotion of convention business and tourism shall include any service, function or activity, whether or not performed, sponsored or advertised by the tourism promotion agency with the intent to attract transient guests to the county.

(6) Such local law shall provide that all revenues resulting from the imposition of the tax payable hereunder shall be paid into the treasury of the county of Nassau and:

(a) twenty-five percent thereof shall be distributed as appropriated by the legislative body under the following formula: (i) sixty-six and two-thirds percent of such twenty-five percent of revenues collected shall be delivered to the tourism promotion agency which the county of Nassau contracts with pursuant to the provisions of subdivision five of this section and (ii) thirty-three and one-third percent of such twenty-five percent of revenues shall be utilized by the county of Nassau in support of cultural programs and activities relevant to the continuation and enhancement of the tourism industry in the following manner: (A) twenty-one percent of such twenty-five percent of revenues shall be used for the care, maintenance, and interpretation for the general public of the historic structures, sites, and unique natural

areas that are managed by the Nassau county department of parks and recreation. All sites and activities so funded shall be opened to tourists on a regular and predictable basis; (B) twelve and one-third percent of such twenty-five percent of revenues shall be used for ongoing operating or program support of non-profit museums and cultural organizations in Nassau county, subject to the final approval of the Nassau county board of supervisors or a Nassau county legislature.

Schedules of availability of all historic and cultural activities and events funded from any part of these revenues shall be provided to the aforementioned tourism promotion agency which is contracted with by the county of Nassau so as to enhance tourism promotion and tourist visitation; and

(b) seventy-five percent thereof shall be distributed as appropriated by the legislative body under the following formula: (i) twenty-five percent of such seventy-five percent of revenues shall be paid into the treasury of the county of Nassau and shall be dedicated to the fulfillment of the general obligations of such county and (ii) seventy-five percent of such seventy-five percent of revenues shall be utilized by the county of Nassau, acting through its county department of parks, recreation and museums, to improve and advance the marketability of cultural and historic attractions located throughout the county of Nassau. Provided, however, that two hundred fifty thousand dollars thereof a year shall be utilized to provide assistance to the historically restored village of Old Bethpage and existing museums in Nassau county for the expenses of new program development and new exhibit development, provided that assistance pursuant to this sentence shall be provided upon application by Old Bethpage Village or any such museum to the county department of parks, recreation and museums which shall make a determination thereon in consultation with the advisory board to the department of parks, recreation and museums pursuant to section four of a chapter of the law of two thousand six which amended this paragraph. Nothing in subparagraph (ii) of this paragraph shall be deemed to prohibit the provision of assistance based upon a joint application submitted by two or more museums, so long as at least one such museum is in the county of Nassau and such assistance is for a new shared exhibit or program located in such county. All monies paid into

the treasury of the county of Nassau pursuant to subparagraph (ii) of this paragraph and remaining therein at the end of each county fiscal year shall continue to be utilized pursuant to this paragraph in the following county fiscal year.

(7) Such local law shall provide for the imposition of a hotel or motel tax for a period to expire on December thirty-first, two thousand twenty-seven.

(8) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

(a) The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

(b) The United States of America, insofar as it is immune from taxation;

(c) Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(9) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

(a) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first

deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

(b) At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(10) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(11) Except in the case of wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(12) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-q's

*** § 1202-q. Hotel or motel taxes in Cayuga county.** (1) Notwithstanding any other provisions of law to the contrary, the county of Cayuga is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. The rates of such tax shall be five percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, continuing or imposing such a tax after the expiration of a previous local law adopted pursuant to this section.

(3) Such tax may be collected and administered by the finance administrator or other fiscal officers of Cayuga county by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the county charter or as otherwise may be provided by such local law.

(4) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Cayuga imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the finance

administrator or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(5) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(6) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(7) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(8) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(9) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(10) All revenues resulting from the imposition of the tax authorized

by this section shall be paid to the treasurer of the county and shall be credited to and deposited into a special fund of the county dedicated to tourism development and promotion, thereafter to be used only for tourism promotion and convention development; provided, however, that the county shall be authorized to retain five percent revenue from such tax to defer the necessary expenses incurred by the county in administering such tax; provided, further the county is authorized to use all or part of the money in the special fund to pay a single not-for-profit corporation, pursuant to a contract with the county, to do tourism promotion and convention development in the county. "Tourist promotion and convention development" is defined as costs related to advertising the county, retaining of staff to promote tourism and other tourism or convention costs recommended by said staff.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-q's

§ 1202-r. Hotel or motel taxes in Genesee county. (1) Notwithstanding any other provisions of law to the contrary, the county of Genesee is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. The rates of such tax shall be three percent of the per diem rental rate for each room provided, however, such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, continuing or imposing such a tax after the expiration of

a previous local law adopted pursuant to this section.

(3) Such tax may be collected and administered by the county treasurer or other fiscal officers of Genesee county by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the county charter or as otherwise may be provided by such local law.

(4) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Genesee imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(5) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(6) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund

or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(7) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(8) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund

thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(9) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(10) All revenues resulting from the imposition of the tax authorized by this section shall be paid to the treasurer of the county and shall be credited to and deposited into a special fund of the county dedicated to tourism development and promotion, thereafter to be used only for tourism promotion and convention development; provided, however, that the county shall be authorized to retain five percent revenue from such tax to defer the necessary expenses incurred by the county in administering such tax. "Tourist promotion and convention development" is defined as costs related to advertising the county, retaining of staff to promote tourism and other tourism or convention costs recommended by said staff.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-rr. Hotel or motel taxes in the city of Batavia.** (1) a. Notwithstanding any other provisions of law to the contrary, the city of Batavia, Genesee county, is hereby authorized and empowered to adopt and

amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

b. The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Batavia by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Batavia imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to

solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Batavia and shall be credited to and deposited in the general fund of the city. The city shall be authorized to retain the necessary revenue, in an amount not to exceed four percent of the total revenue, to defer the expense of the city in administering such tax and the balance of such revenues shall be allocated to community and economic development, planning and

tourism.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 2 § 1202-rr's

* NB Repealed December 31, 2029

*** § 1202-rr. Occupancy tax in the town of Lancaster. (1)**

Notwithstanding any other provision of law to the contrary, the town of Lancaster, in the county of Erie, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town.

For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility consisting of rentable units and provides lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Lancaster by such means and in such manner as

other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Lancaster imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which insures to the benefit of any private shareholder or individual and no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however,

that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Lancaster and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-rr's

* NB Repealed December 31, 2029

§ 1202-s. Hotel or motel taxes in Essex county. (1) Notwithstanding any other provisions of law to the contrary, the county of Essex is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the board of supervisors has or would have the power and authority to impose upon persons occupying

hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, continuing or imposing such a tax after the expiration of a previous local law adopted pursuant to this section.

(3) Such tax may be collected and administered by the county treasurer or other fiscal officers of Essex county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(4) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Essex imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the

rent or charge.

(5) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(6) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(7) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(8) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(9) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(10) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Essex and shall be credited and deposited into the general fund of the county

thereby to be allocated at the discretion of the county legislature of the county of Essex for the purposes of tourism promotion and development and economic development which supports tourism promotion and development, provided, however, that the county shall be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated exclusively to the promotion and development of tourism and economic development which supports tourism promotion and development of Essex county, its cities, towns and villages, and other directly related and supporting activities, and shall not be used for any other purpose. In soliciting contracts for services and in the expenditure of monies under this law, the county of Essex shall follow all applicable federal, state and county procurement laws, policies, rules and procedures.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-t. Hotel or motel taxes in Niagara county. (1) a.**

Notwithstanding any other provisions of law to the contrary, the county of Niagara is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", inns and tourist homes.

b. (i) The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a

person occupying any room or rooms in a hotel or motel for at least thirty consecutive days. Notwithstanding any other provision of this section, any city in the county of Niagara imposing hotel or motel taxes pursuant to the authority of this subpart shall have the prior right to impose such taxes in such city, up to the maximum rate of tax authorized for such city in this subpart; and the rate of tax authorized to be imposed by the county pursuant to the authority of this section in any such city imposing such a tax shall be reduced by the rate of such city's tax.

(ii) Provided further that, any such city tax, to the extent that it would require a reduction in the county's tax rate imposed pursuant to this section in such city, shall not become effective before the commencement of the county's next succeeding fiscal year and then only if the city shall have given notice to such county of its imposition of such tax at least six months prior to the commencement of such fiscal year, provided, however, that the local legislative body of such county may waive the requirement of such notice and postponement of the effective date of such city tax.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Niagara county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Niagara imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to non-payment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the

rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local law shall be paid into the treasury of Niagara county and shall be credited to and deposited as follows: (a) the first four percentum (4%)

shall be deposited in the general fund of the county thereafter to be allocated and paid to a not-for-profit corporation under contract with the county for the promotion of tourism in the county; and (b) the additional one percentum (1%) of such revenue from this tax shall be dedicated to the operation of the Discover Niagara shuttle. Provided, however, that such local law shall provide that the county shall be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax.

(10) Each enactment of a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-t's

*** § 1202-t. Hotel or motel taxes in Ontario county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Ontario is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis, and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. Such tax shall not be applicable to a facility having three rentable units or less.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes

of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Ontario county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Ontario imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a quarterly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article.

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Ontario county and shall be credited to and deposited in the general fund of such county and shall be available thereafter for the promotion of tourism and tourist attractions in Ontario county and that not more than five percent of such revenue shall be used for the cost of administering such tax. Such promotion may be carried out by an appropriate organization or organizations as designated by the Ontario county board of supervisors.

(10) Each enactment of a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-t's

*** § 1202-u. Hotel or motel taxes in Allegany county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Allegany is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Allegany county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Allegany imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer

or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this chapter:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be

instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Allegany county and shall be credited to and deposited in the general fund of the county; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of Allegany county, its cities, towns and villages.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 4 § 1202-u's

*** § 1202-u. Hotel and motel tax in Warren county.** (1) Notwithstanding any other provision of law to the contrary, the county of Warren is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel or motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", "inn", "housekeeping cottages with four or more units", and "tourist facilities".

The rates of such tax shall be one-half of one percent, any whole percent or any combination of a whole percent and one-half of one percent; provided that such rates shall not exceed four percent; provided, however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer

or other fiscal officers of the county of Warren by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Warren imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to

children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. at the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination

denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Warren and shall be credited to and deposited in the general fund of the county, thereafter to be allocated for tourism promotion and tourist and convention development; provided, however, that such local laws shall provide that the county of Warren shall be authorized to retain up to a maximum of ten percent of such revenues to defer the necessary expenses of such county in administering such tax. The revenues derived from such tax, after deducting the amount provided for administering the tax, as provided by local law, shall be allocated to enhance the general economy of the county of Warren, and its city, towns and villages through the promotion of tourist activities, conventions, trade shows, special events, and other directly related and supporting activities.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 4 § 1202-u's

*** § 1202-u. Hotel or motel taxes in Orleans county.** (1) a.
Notwithstanding any other provisions of law to the contrary, the county

of Orleans is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the county legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", inns and tourist homes.

b. The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Orleans county by such means and in such manner as other taxes which are otherwise collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Orleans imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to non-payment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the

payment to the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a

surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local law shall be paid into the treasury of Orleans county and shall be credited to and deposited in the general fund of the county. Provided, however, that such local law shall provide that the county shall be authorized to retain up to a maximum of five percent of such revenue to

defer the necessary expenses of the county in administering such tax.

(10) Each enactment of a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 4 § 1202-u's

*** § 1202-u. Hotel and motel taxes in Cattaraugus county. (1)**

Notwithstanding any other provisions of law to the contrary, the county of Cattaraugus is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", inns, cabins, condominiums, cottages, campgrounds, lodges, tourist homes and convention centers. For the purpose of this section, the term "condominium" shall mean and include those units rented or leased directly by the owner or through a real estate agency or rental management agency. The provisions of this section relating to campgrounds, shall only apply to those leases and rentals in which the campground provides overnight shelter or lodging, and shall not apply to the provision of services by a campground when the customer provides his or her own shelter or lodging.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided, however, that such tax shall not be applicable to a permanent resident of such hotel or motel. For the

purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least sixty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Cattaraugus county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Cattaraugus imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Cattaraugus county and shall be credited to and deposited in the general fund of the county, thereafter to be allocated at the discretion of the county legislature of the county of Cattaraugus for the purposes of tourism and economic development; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of Cattaraugus county, its cities, towns, and villages, through promotion of tourist activities, conventions, trade shows, special events, and other directly related and supporting activities.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of

this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 4 § 1202-u's

*** § 1202-uu. Hotel or motel taxes in the city of Olean. (1) a.**

Notwithstanding any other provisions of law to the contrary, the city of Olean, Cattaraugus county, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

b. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the city of Olean by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Olean imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the

tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or

unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Olean and shall be credited to and deposited in the general fund of the city. The city shall be authorized to retain the necessary revenue, in an amount not to exceed four percent of the total revenue, to defer the expense of the city in administering such tax and the balance of such revenues shall be allocated to community and economic development, planning and tourism.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB Repealed September 1, 2027

*** § 1202-uuu. Hotel or motel taxes in the village of Ellicottville.**

(1) a. Notwithstanding any other provisions of law to the contrary, the village of Ellicottville, Cattaraugus county, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

b. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Ellicottville by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of Ellicottville imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in

the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Ellicottville and shall be credited to and deposited in the general fund of the village. The village shall be authorized to retain the necessary revenue, in an amount not to exceed four percent of the total revenue, to defer the expense of the village in administering such tax and the balance of such revenues shall be allocated to community and economic development, planning and tourism.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall

prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB Repealed September 1, 2027

*** § 1202-uuu. Hotel or motel taxes in the town of Minisink.** (1) a. Notwithstanding any other provisions of law to the contrary, the town of Minisink, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section the term "hotel" or "motel" shall mean any facility or portion thereof where single rooms or suites of rooms are rented or hired out to be occupied or which are occupied by transient guests who are lodged overnight, with or without meals, for sleeping purposes for compensation, whether the compensation be paid directly or indirectly and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

b. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Minisink by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Minisink imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the

tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any

other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Minisink and shall be credited to and deposited in the general fund of the town. Such revenues may be used to support municipal services, infrastructure, and other essential expenditures as determined by the town board.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the effective date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 2 § 1202-uuu's

* NB Repealed August 21, 2029

§ 1202-v. Hotel or motel taxes in Lewis county. (1) Notwithstanding any other provisions of law to the contrary, the county of Lewis is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist facilities".

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be

applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Lewis county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Lewis imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from

taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition

precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Lewis and shall be credited to and deposited in the general fund of the county.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 1202-w. Hotel or motel taxes in Wyoming county. (1) Notwithstanding any other provisions of law to the contrary, the county of Wyoming is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging

on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Wyoming county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Wyoming imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a

public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Wyoming county and shall be credited to and deposited in the general fund of the county; provided, however, that such local laws shall provide that the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of Wyoming county, its cities, towns and villages.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this

section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-x. Occupancy tax in the city of Yonkers.** (1) Notwithstanding any other provision of law to the contrary, the city of Yonkers, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed five and seven-eighths percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Yonkers by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied for and on account of the city of Yonkers imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the

rent or charge; provided however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on a basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune for taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or education purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of

the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with

intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Yonkers and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

*** § 1202-xx. Occupancy tax in the town of North Castle. (1)**

Notwithstanding any other provision of law to the contrary, the town of North Castle, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of North Castle by such means and in such manner as other taxes which are now collected and administered by such officer or

as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of North Castle imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious,

charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall

not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of North Castle and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

*** § 1202-y. Hotel or motel taxes in the city of Geneva. (1)**

Notwithstanding any other provisions of law to the contrary, the city of Geneva, Ontario county, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such city. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the city treasurer or other fiscal officers of the city of Geneva by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the city of Geneva imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the city treasurer or other fiscal officers of the city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation

shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Geneva and shall be credited to and deposited in the general fund of the city; provided, however, that such local laws shall provide that the city

shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the city in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, as so authorized by local law, shall be allocated to enhance the general economy of the city of Geneva.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 2 § 1202-y's

*** § 1202-y. Hotel or motel taxes in Yates county.** (1) Notwithstanding any other provisions of law to the contrary, the county of Yates is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed four percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Yates county by such means and in such

manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Yates imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to

the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article

seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of Yates county and shall be credited to and deposited in the general fund of the county; provided, however, that such local laws shall provide that: (a) the county shall be authorized and shall dedicate fifty percent of such revenue to promote tourism in the county; and (b) the county shall be authorized to retain up to a maximum of ten percent of such revenue to defer the necessary expenses of the county in administering such tax. The revenue derived from the tax, after deducting the amount provided for tourism and the administration of such tax, as so authorized by local law, shall be allocated to enhance the general economy of Yates county, its towns and villages.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

(11) Each enactment of such local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

* NB There are 2 § 1202-y's

§ 1202-z. Hotel or motel taxes in Clinton county. (1) Notwithstanding any other provisions of law to the contrary, the county of Clinton is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article such as the county legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(2) Such tax may be collected and administered by the county treasurer or other fiscal officers of Clinton county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the county of Clinton imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer or other fiscal officers of the county, specified in such local law,

shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable pursuant to this section shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the

local laws shall be paid into the treasury of the county of Clinton and shall be credited and deposited into a special tourism development and promotion fund, thereafter to be allocated for publicizing the advantages of the county of Clinton pursuant to subdivision fourteen of section two hundred twenty-four of the county law; provided, however, that such local laws shall provide that the county shall:

a. be authorized to retain up to a maximum of five percent of such revenue to defer the necessary expenses of the county in administering such tax;

b. endeavor to expend the revenues in such fund in a manner reasonably intended to publicize the areas within the county of Clinton commensurate with the amount of revenues generated from such areas; and

c. contract with a tourism promotion agent, for the expenditure of the revenues in such fund pursuant to subdivision fourteen of section two hundred twenty-four of the county law, provided however that the county of Clinton may terminate such contract and/or enter into other contracts in the event that such tourism promotion agent dissolves or in the determination of the board of supervisors of the county of Clinton after public hearing ceases to adequately perform such contract.

(10) Each enactment of such local law may provide for imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

*** § 1202-z-1. Occupancy tax in the village of Tuckahoe. (1)**

Notwithstanding any other provision of law to the contrary, the village of Tuckahoe, in the county of Westchester, is hereby authorized and

empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Tuckahoe by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Tuckahoe imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Tuckahoe and shall be credited to and deposited in the general fund of the

village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

*** § 1202-z-2. Occupancy tax in the village of Weedsport. (1)**

Notwithstanding any other provision of law to the contrary, the village of Weedsport, in the county of Cayuga, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall be seven percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Weedsport by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account

of the village of Weedsport imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not

all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article

seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Weedsport and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

*** § 1202-z-3. Occupancy tax in the village of Mount Kisco. (1)**

Notwithstanding any other provision of law to the contrary, the village of Mount Kisco, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and

authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed three percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Mount Kisco by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Mount Kisco imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and

approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Mount Kisco and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years

from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

*** § 1202-z-4. Occupancy tax in the town of Putnam Valley. (1)**

Notwithstanding any other provision of law to the contrary, the town of Putnam Valley, in the county of Putnam, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed two percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the town of Putnam Valley by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the town of Putnam Valley imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person

entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town of Putnam Valley, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was

not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Putnam Valley and shall be credited to and deposited in the general fund of such town. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed August 23, 2027

*** § 1202-z-4. Occupancy tax in the village of Medina. (1)**

Notwithstanding any other provision of law to the contrary, the village of Medina, in the county of Orleans, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such

for the lodging of guests. The term "hotel" includes an apartment hotel, a motel or a boarding house, whether or not meals are served. The rate of such tax shall not exceed two percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Medina by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Medina imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other

political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation; or

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least thirty consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed

or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Medina and shall be credited to and deposited in the general fund of such village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted

pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 2 § 1202-z-4's

* NB Repealed December 31, 2027

*** § 1202-z-5. Occupancy tax in the city of Auburn.** (1) Notwithstanding any other provision of law to the contrary, the city of Auburn, in the county of Cayuga, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, a boarding house, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or not meals are served. The rate of such tax shall not exceed five percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Auburn by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the city of Auburn imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in

respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this

section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper

fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Auburn and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

*** § 1202-zz. Occupancy tax in the village of Highland Falls. (1)**

Notwithstanding any other provision of law to the contrary, the village of Highland Falls, in the county of Orange, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel,

a motel, a boarding house, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or not meals are served. The rate of such tax shall not exceed five percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Highland Falls by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Highland Falls imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another

state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme

court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Highland Falls and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of

this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2027

*** § 1202-zz-1. Hotel or motel taxes in the town of DeWitt. (1)**

Notwithstanding any other provisions of law to the contrary, the town of DeWitt, in the county of Onondaga, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon such persons occupying hotel or motel rooms in such town. The rates of such tax shall not exceed two (2) percent of the per diem rental rate for each room provided whether the room is rented on a daily or longer term basis.

(2) Such tax may be collected and administered by the comptroller or other fiscal officer of the town of DeWitt by such means and in such manner as other taxes are now collected and administered by such officers in accordance with the county charter or otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of DeWitt imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the comptroller or other fiscal officers of the town, specified in such local law, shall be

joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade for business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of such notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and

penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transmit business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) Revenues resulting from the imposition of tax authorized by this section shall be paid into the treasury of the town of DeWitt, and shall be credited to and deposited in the general fund of the town but will be

attributed to specific line items in the annual DeWitt town budget dedicated to the town's Willis Carrier Park and tourism infrastructure improvements promoting tourism and increases in hotel and motel industry room occupancy, and that such funds may thereafter be allocated and utilized for the aforesaid purposes of paying for the construction, re-construction, maintenance, upkeep, and operations of the town of DeWitt Willis Carrier Park, the construction, re-construction, maintenance, upkeep, and operations of any appurtenant facilities or services thereto, the payment or re-payment of any bond, loan, note, or other financing instrument, the debt associated with which was incurred for the construction, re-construction, maintenance, upkeep, and operation of the such park, appurtenant facilities, and services, and the construction, re-construction, maintenance or upkeep of town infrastructure utilized in connection with the tourism and the hotel and motel industry within the town of DeWitt.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed September 1, 2027

*** § 1202-zz-2. Hotel or motel taxes in the village of Croton-on-Hudson.** (1) Notwithstanding any other provisions of law to the contrary, the village of Croton-on-Hudson, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such village. For the purposes of this section the term "hotel" or "motel" shall mean any facility or portion thereof where single rooms or suites of rooms are rented or hired out to be occupied or which are occupied by transient guests who are lodged overnight, with or without meals, for sleeping purposes for compensation, whether the compensation be paid directly or indirectly and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not

exceed three percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the village of Croton-on-Hudson by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the village of Croton-on-Hudson imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from

taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition

precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Croton-on-Hudson and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-zz-2's

* NB Repealed October 16, 2027

*** § 1202-zz-2. Hotel or motel taxes in the town of Patterson. (1)**

Notwithstanding any other provisions of law to the contrary, the town of Patterson, in the county of Putnam, is hereby authorized and empowered to adopt and amend local laws imposing in such town a tax, in addition to any other tax authorized and imposed pursuant to this article such as

the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms in such town. For the purposes of this section the term "hotel" or "motel" shall mean any facility or portion thereof where single rooms or suites of rooms are rented or hired out to be occupied or which are occupied by transient guests who are lodged overnight, with or without meals, for sleeping purposes for compensation, whether the compensation be paid directly or indirectly and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The rates of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this section the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(2) Such tax may be collected and administered by the chief fiscal officer of the town of Patterson by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the town of Patterson imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the town, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the tax on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon

any transaction, by or with any of the following in accordance with section twelve hundred thirty of this article:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall

approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the town of Patterson and shall be credited to and deposited in the general fund of the town. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-zz-2's

* NB Repealed October 16, 2027

*** § 1202-zz-2. Occupancy tax in the village of Baldwinsville. (1)**

Notwithstanding any other provision of law to the contrary, the village of Baldwinsville, in the county of Onondaga, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, a boarding house, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or not meals are served. The rate of such tax shall not exceed five percent of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the village of Baldwinsville by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the village of Baldwinsville imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club,

hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the village, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder

shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such

proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the village of Baldwinsville and shall be credited to and deposited in the general fund of the village. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB There are 3 § 1202-zz-2's

* NB Repealed December 31, 2027

*** § 1202-zz-3. Occupancy tax in the county of Herkimer. (1)**

Notwithstanding any other provision of law to the contrary, the county of Herkimer, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any hotel. For the purposes of this section, the term "hotel" shall mean a building or portion of such building which is rentable or consisting of rentable units providing lodging on an overnight basis for guests. The term "hotel" includes an apartment hotel, a motel, and facilities designated and commonly known as a "bed and breakfast" and similar "tourist" facilities, whether or not meals are served. The rate of such tax shall not exceed five percent

of the per diem rental rate for each room whether such room is rented on a daily or longer basis.

(2) Such taxes may be collected and administered by the chief fiscal officer of the county of Herkimer by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation occupied for and on account of the county of Herkimer imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel, or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the county, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

a. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state;

b. The United States of America, insofar as it is immune from taxation;

c. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; or

d. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least ninety consecutive days.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

b. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the county of Herkimer and shall be credited to and deposited in the general fund of the county. Such revenues may be used for any lawful purpose.

(10) Each enactment of such a local law may provide for the imposition of a hotel or motel tax for a period of time no longer than two years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

(11) If any provision of this section or the application thereof to

any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

* NB Repealed December 31, 2029

§ 1203. Taxes administered by cities under one million. a.

Notwithstanding any other provision of law to the contrary, any city in this state with a population of less than one million is hereby authorized and empowered, subject to the limitations and exemptions in part II of this article, to adopt and amend local laws, ordinances or resolutions imposing in such city any of the taxes authorized under subdivisions (c), (d) and (e) of section twelve hundred one, at the rates provided for therein, such taxes to be administered and collected in the manner provided for in subpart A of part III of this article.

b. Notwithstanding any provision of law to the contrary, the local governing body of the city of Yonkers, by the adoption of local laws, ordinances or resolutions may impose in such city the tax otherwise authorized under subdivision (b) of section twelve hundred one, at a rate not to exceed three per centum, such taxes to be administered and collected in the manner provided for in subpart A of part III of this article. Such local law, ordinance, or resolution may provide that any transfer of property owned and occupied as a residence by one or more persons, each of whom is sixty-five years of age or over, shall be exempt from such tax.

§ 1204. Taxes administered by cities with populations of less than one hundred twenty-five thousand on request of school districts. (a) On request by a majority vote of the whole number of the school authorities of the school district or districts which are coterminous with, partly within or wholly within a city having a population of less than one hundred twenty-five thousand, such city is hereby authorized and empowered to adopt and amend local laws imposing for school district purposes any of the taxes which such city is empowered to impose for city purposes pursuant to section twelve hundred three.

(b) A local law imposing such a tax shall be effective only during the period that each of the school districts partly within and partly without such city, by a majority vote of the whole number of its school authorities, shall impose an identical tax within that part of its territorial limits outside of such city. Such school authorities are hereby authorized and empowered so to impose such tax, which shall be effective only during the period when the tax imposed by such city on areas of school districts within such city shall be effective.

(c) Taxes so imposed by such a city and by such school districts shall be administered and collected by such city, in the manner provided for in this section and in subpart A of part III of this article. In the case of such administration and collection in areas outside such city, the city and the city officers and employees administering and collecting the tax shall act as agents for the school district or districts which imposed the tax in such areas. In such instances the school authorities of each district and the governing board of such city may enter into an agreement for the administration and collection of such taxes by the city for and on behalf of the school district. Any such agreement shall state the consideration payable to such city for such service and make such other related provisions as the parties thereto shall consider necessary.

(d) Subject to the terms of such agreement, the total net collections from a tax so imposed by such a city and school districts shall be distributed and paid quarterly to the city school district where it is coterminous with or includes the entire city or to all the school districts partly within or wholly within such city.

(e) Except where the city school district is coterminous with the city or includes the entire area of the city, such amounts shall be distributed and paid to the school district or districts partly within or wholly within the city, in accordance with the total average daily attendance for the last preceding school year of pupils residing in each such district and without regard to the location of the school attended.

(f) All actions taken by majority votes of school authorities pursuant to this section shall be deemed resolutions under this article and shall be official records of the school districts in which they are taken. Certified copies thereof forthwith shall be filed in the offices of the city clerk, state department of education, the secretary of state and

the state comptroller.

§ 1205. Imposition of taxes on deeds in the city of Mount Vernon. (a) Notwithstanding any provision of law to the contrary, the local governing body of the city of Mount Vernon, by the adoption and amendment of local laws, ordinances or resolutions may impose in such city and provide for the administration and collection of a tax on deeds by which real property is conveyed in such city in the manner set forth and as authorized in subdivision (b) of this section.

(b) There is hereby imposed in the city of Mount Vernon a tax on each deed by which any real property is conveyed (measured by the consideration or value of the interest or property conveyed) at a rate not to exceed one and one-half percent of such consideration or value with respect to all conveyances, provided that such city may allow deductions for any liens on such interest or property and may also allow an exemption not in excess of one hundred thousand dollars on the consideration or value of the interest or property conveyed. Provided, further, that such taxes shall not apply if the contract for any such conveyance was made prior to September first, nineteen hundred eighty-four. Such taxes may be imposed on any conveyance or transfer of real property or interest therein by deed where the real property is located in such city regardless of where transactions, negotiations, transfers of deeds or other actions with regard to the transfer or conveyance take place, subject only to the restrictions contained in section twelve hundred thirty. The payment of, and the filing of a return relating to, any such taxes may be required as a condition precedent to the recording of a deed.

§ 1206. Imposition of taxes on deeds in the city of Peekskill. (a) Notwithstanding any provision of law to the contrary, the local governing body of the city of Peekskill, by the adoption and amendment of local laws, ordinances or resolutions may impose in such city and provide for the administration and collection of a tax on deeds by which real property is conveyed in such city in the manner set forth and as authorized in subdivision (b) of this section.

(b) There is hereby imposed in the city of Peekskill a tax on each deed by which any real property is conveyed (measured by the consideration or value of the interest or property conveyed) at a rate not to exceed one percent of such consideration or value with respect to all conveyances, provided that such city may allow deductions for any liens on such interest or property and may also allow an exemption not in excess of one hundred thousand dollars on the consideration or value of the interest or property conveyed. Provided, further, that such taxes shall not apply if the contract for any such conveyance was made prior to September first, two thousand seven. Such taxes may be imposed on any conveyance or transfer of real property or interest therein by deed where the real property is located in such city regardless of where transactions, negotiations, transfers of deeds or other actions with regard to the transfer or conveyance take place, subject only to the restrictions contained in section twelve hundred thirty. The payment of, and the filing of a return relating to, any such taxes may be required as a condition precedent to the recording of a deed.

SUBPART B--TAXES ADMINISTERED BY STATE TAX COMMISSION

§ 1210. Taxes of cities and counties administered by state tax commission. Notwithstanding any other provision of law to the contrary, but subject to the limitations and exemptions in part II of this article, any city in this state or county in this state, except a county wholly within a city, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing in any such city or county the following taxes, at the rate of one-half, one, one and one-half, two, two and one-half or three percent, provided, however, that:

(i) with respect to a city of one million or more and the following counties (1) any such city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes in any such city, at the rate of four and one-half percent;

(2) the county of Nassau is hereby further authorized and empowered to

adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is three-quarters percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning January first, nineteen hundred eighty-six and ending November thirtieth, two thousand twenty-seven, subject to the limitation set forth in section twelve hundred sixty-two-e of this article, and also at a rate which is one-half percent additional to the three percent rate authorized above in this paragraph, and which is also additional to the three-quarters percent rate also authorized above in this clause for such county, for the period beginning September first, nineteen hundred ninety-one and ending November thirtieth, two thousand twenty-seven;

(3) the county of Rensselaer is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-four and ending November thirtieth, two thousand twenty-seven;

(4) the county of Erie is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes (i) at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning January tenth, nineteen hundred eighty-eight and ending November thirtieth, two thousand twenty-seven; and (ii) at a rate which is three-quarters of one percent additional to the three percent rate authorized above in this paragraph, and which is also additional to the one percent rate also authorized above in this clause for such county, for the period beginning December first, two thousand eleven, and ending November thirtieth, two thousand twenty-seven;

(5) the county of Cattaraugus is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, nineteen hundred eighty-six and ending November thirtieth, two thousand twenty-seven;

(6) the county of Wyoming is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent

rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-two and ending November thirtieth, two thousand twenty-seven;

(7) the county of Ulster is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand two and ending November thirtieth, two thousand twenty-seven;

(8) the county of Allegany is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is: (i) one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, nineteen hundred eighty-six and ending November thirtieth, two thousand four; and (ii) one and one-half percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand four and ending November thirtieth, two thousand twenty-seven;

(9) the county of Cayuga is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-two and ending November thirtieth, two thousand twenty-seven;

(10) the county of Albany is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-two and ending November thirtieth, two thousand twenty-seven;

(11) the county of Tompkins is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, nineteen hundred ninety-two and ending November thirtieth, two thousand twenty-seven;

(12) the county of Cortland is hereby further authorized and empowered

to adopt and amend local laws, ordinances, or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-two and ending November thirtieth, two thousand twenty-seven;

(13) the county of Oneida is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is: (i) one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-two and ending November thirtieth, two thousand twenty-seven; and also (ii) at a rate which is three-quarters of one percent or one-half of one percent additional to the three percent rate authorized above in this paragraph, and which is also additional to the one percent rate also authorized above in this clause for such county, for the period beginning December first, two thousand eight and ending November thirtieth, two thousand twenty-seven;

(14) the county of Suffolk is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand one and ending November thirtieth, two thousand twenty-seven;

(15) the county of Greene is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, nineteen hundred ninety-three, and ending November thirtieth, two thousand twenty-seven;

(16) the county of Orleans is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, nineteen hundred ninety-three, and ending November thirtieth, two thousand twenty-seven;

(17) the county of Tioga is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such

taxes at a rate which is: (i) one-half of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-three, and ending November thirtieth, two thousand three; and (ii) one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand five, and ending November thirtieth, two thousand twenty-seven;

(18) the county of Broome is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, nineteen hundred ninety-four, and ending November thirtieth, two thousand twenty-seven;

(19) the county of Herkimer is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-four, and ending November thirtieth, two thousand twenty-seven;

(20) the county of Genesee is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-four, and ending November thirtieth, two thousand twenty-seven;

(21) the county of Columbia is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, nineteen hundred ninety-five, and ending November thirtieth, two thousand twenty-seven;

(22) the county of Schuyler is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, nineteen hundred ninety-nine, and ending November thirtieth, two thousand twenty-seven;

(23) the county of Rockland is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is: (i) five-eighths of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, two thousand two, and ending November thirtieth, two thousand twenty-seven; and also (ii) at a rate which is three-eighths of one percent additional to the three percent rate authorized above in this paragraph, and which is also additional to the five-eighths of one percent rate also authorized above in this clause for such county, for the period beginning March first, two thousand seven and ending November thirtieth, two thousand twenty-seven;

(24) the county of Chenango is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand two, and ending November thirtieth, two thousand twenty-seven;

(25) the county of Monroe is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for the period beginning December first, nineteen hundred ninety-three and ending November thirtieth, two thousand twenty-seven;

(26) the county of Steuben is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, nineteen hundred ninety-two and ending November thirtieth, two thousand twenty-seven;

(27) the county of Chemung is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand two, and ending November thirtieth, two thousand twenty-seven;

(28) the county of Seneca is hereby further authorized and empowered

to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand two and ending November thirtieth, two thousand twenty-seven;

* (29) the county of Niagara is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, two thousand three, and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (29)'s

* (29) the county of Dutchess is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is three-quarters of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, two thousand three, and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (29)'s

(30) the county of Yates is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand three, and ending November thirtieth, two thousand twenty-seven;

* (31) the county of Schenectady is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one-half of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand three, and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (31)'s

* (31) the county of Montgomery is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand three, and ending

November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (31)'s

(32) the county of Livingston is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand three, and ending November thirtieth, two thousand twenty-seven;

(33) the county of Sullivan is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is: (i) one-half of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand three, and ending November thirtieth, two thousand twenty-seven; and (ii) an additional one-half of one percent in addition to the other rates authorized above in this paragraph for such county for the period beginning June first, two thousand seven and ending November thirtieth, two thousand twenty-seven;

* (34) the county of Otsego is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand three, and ending November thirtieth, two thousand twenty-seven;

* NB There are 3 clause (34)'s

* (34) the county of Delaware is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand three, and ending November thirtieth, two thousand thirteen;

* NB There are 3 clause (34)'s

* (34) the county of Wayne is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand five, and ending November

thirtieth, two thousand twenty-seven;

- * NB There are 3 clause (34)'s

- * (35) the county of Schoharie is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand four, and ending November thirtieth, two thousand twenty-seven;

- * NB There are 3 clause (35)'s

- * (35) the county of Madison is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand four, and ending November thirtieth, two thousand twenty-seven;

- * NB There are 3 clause (35)'s

- * (35) the county of Orange is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is three-quarters of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand four, and ending November thirtieth, two thousand twenty-seven;

- * NB There are 3 clause (35)'s

- * (36) the county of Clinton is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand seven, and ending November thirtieth, two thousand twenty-seven;

- * NB There are 4 clause (36)'s

- * (36) the county of Lewis is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand four, and ending November thirtieth, two thousand twenty-seven;

- * NB There are 4 clause (36)'s

* (36) the county of Oswego is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand four, and ending November thirtieth, two thousand twenty-seven;

* NB There are 4 clause (36)'s

* (36) the county of Essex is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand thirteen, and ending November thirtieth, two thousand twenty-seven;

* NB There are 4 clause (36)'s

* (37) the county of Jefferson is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand fifteen, and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (37)'s

* (37) the county of Onondaga is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand four, and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (37)'s

(38) the county of Chautauqua is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is: (i) one and one-quarter percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning March first, two thousand five and ending August thirty-first, two thousand six; (ii) one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand six and ending November thirtieth, two thousand seven; (iii)

three-quarters of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand seven and ending November thirtieth, two thousand ten; (iv) one-half of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand ten and ending November thirtieth, two thousand fifteen; and (v) one percent additional to the three percent rate authorized above in this clause for such county for the period beginning December first, two thousand fifteen and ending November thirtieth, two thousand twenty-seven;

* (39) the county of Fulton is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand five, and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (39)'s

* (39) the county of Putnam is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is: (i) one-half of one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand five and ending August thirty-first, two thousand seven; and (ii) one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand seven and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (39)'s

* (40) the county of Franklin is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand six and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (40)'s

* (40) the county of Ontario is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is: (A) one-eighth of one percent

additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand six and ending November thirtieth, two thousand twenty-seven; and also (B) at a rate that is three-eighths of one percent additional to the three percent rate authorized above in this paragraph, and that is also additional to the one-eighth of one percent rate authorized in this clause for such county, for the period beginning September first, two thousand nine and ending November thirtieth, two thousand twenty-seven;

* NB There are 2 clause (40)'s

* (41) The county of St. Lawrence is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand thirteen and ending November thirtieth, two thousand twenty-seven;

* NB There are 3 clause (41)'s

* (41) The county of Hamilton is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning December first, two thousand thirteen and ending November thirtieth, two thousand twenty-seven;

* NB There are 3 clause (41)'s

* (41) the county of Delaware is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning September first, two thousand two, and ending November thirtieth, two thousand twenty-seven;

* NB There are 3 clause (41)'s

(42) the county of Westchester is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning August first, two thousand nineteen and ending November thirtieth, two thousand twenty-seven;

(ii) with respect to the following cities * (1) the city of Yonkers is

hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is: (a) one percent additional to the three percent rate authorized above in this paragraph for such city; and (b) one-half of one percent in addition to the other rates authorized in this paragraph for such city for the period beginning September first, two thousand fifteen and ending November thirtieth, two thousand twenty-seven;

* NB Effective until November 30, 2027

* (1) the city of Yonkers is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such city;

* NB Effective November 30, 2027

(2) the city of Mount Vernon is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such city;

(3) the city of White Plains is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is: (i) one-half of one percent additional to the three percent rate authorized above in this paragraph for such city for the period beginning September first, nineteen hundred ninety-three and ending August thirty-first, two thousand twenty-seven; and (ii) an additional one-quarter of one percent in addition to the other rates authorized in this paragraph for such city for the period beginning March first, two thousand eight and ending August thirty-first, two thousand twenty-seven; and (iii) an additional one-quarter of one percent in addition to the other rates authorized in this paragraph for such city for the period beginning June first, two thousand ten and ending August thirty-first, two thousand twenty-seven;

(4) the city of New Rochelle is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such city for the period beginning September first, nineteen hundred ninety-three and ending December thirty-first, two thousand twenty-seven;

(5) the city of Fulton is hereby further authorized and empowered to

adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such city for the period beginning March first, two thousand three, and ending November thirtieth, two thousand seven;

(6) the city of Oswego is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such city for the period beginning September first, two thousand four, and ending November thirtieth, two thousand twenty-seven;

* (iii) the maximum rate referred to in section twelve hundred twenty-four of this article shall be calculated without reference to the following additional rates authorized in subparagraphs (i) and (ii) of this paragraph: one and one-half percent for the county of Allegany; one percent for the counties of Rensselaer, Erie, Cattaraugus, Chautauqua, Wyoming, Ulster, Albany, Suffolk, Essex, Greene, Orleans, Franklin, Hamilton, Herkimer, Jefferson, Genesee, Columbia, Schuyler, Chenango, Monroe, Steuben, Chemung, Seneca, Livingston, Niagara, Yates, Tioga, Montgomery, Delaware, Wayne, Schoharie, Putnam, Clinton, St. Lawrence and Onondaga and the cities of Mount Vernon and New Rochelle; three-quarters of one percent for the counties of Dutchess, Lewis, and Orange; one percent and three-quarters of one percent or one-half of one percent for the county of Oneida; three-quarters of one percent and one-half of one percent for the county of Nassau; one-half of one percent and one-quarter of one percent and one-quarter of one percent for the city of White Plains; one-half or one percent for the county of Tompkins; three-eighths of one percent and five-eighths of one percent for the county of Rockland; one-half of one percent for the counties of Putnam and Schenectady; one-eighth of one percent and three-eighths of one percent for the county of Ontario; one-half of one percent and one-half of one percent for the county of Sullivan; one percent and one-half of one percent for the city of Yonkers;

* NB Effective until November 30, 2027

* (iii) the maximum rate referred to in section twelve hundred twenty-four of this article shall be calculated without reference to the following additional rates authorized in subparagraphs (i) and (ii) of

this paragraph: one and one-half percent for the county of Allegany; one percent for the counties of Rensselaer, Erie, Cattaraugus, Chautauqua, Wyoming, Ulster, Albany, Suffolk, Essex, Greene, Orleans, Franklin, Hamilton, Herkimer, Jefferson, Genesee, Columbia, Schuyler, Chenango, Monroe, Steuben, Chemung, Seneca, Livingston, Niagara, Yates, Tioga, Montgomery, Delaware, Wayne, Schoharie, Putnam, Clinton, St. Lawrence and Onondaga and the cities of Yonkers, Mount Vernon and New Rochelle; three-quarters of one percent for the counties of Dutchess, Lewis, and Orange; one percent and three-quarters of one percent or one-half of one percent for the county of Oneida; three-quarters of one percent and one-half of one percent for the county of Nassau; one-half of one percent and one-quarter of one percent and one-quarter of one percent for the city of White Plains; one-half or one percent for the county of Tompkins; three-eighths of one percent and five-eighths of one percent for the county of Rockland; one-half of one percent for the counties of Putnam and Schenectady; one-eighth of one percent and three-eighths of one percent for the county of Ontario; and one-half of one percent and one-half of one percent for the county of Sullivan;

* NB Effective November 30, 2027

(iv) with respect to certain counties in the metropolitan commuter transportation district, if the county of Dutchess, the county of Orange or the county of Rockland withdraws from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of the public authorities law, such county is hereby authorized and empowered, in the alternative, to adopt and amend local laws, ordinances or resolutions imposing such taxes at the rate of five-eighths, seven-eighths, one and one-eighth, one and three-eighths, one and five-eighths, one and seven-eighths, two and one-eighth, two and three-eighths, two and five-eighths, two and seven-eighths, three and one-eighth or three and three-eighths percent if the revenues from a three-eighths percent rate of such tax are required by such local laws, ordinances or resolutions to be set aside for mass transportation purposes; all such taxes to be administered, collected and distributed by the commissioner as provided in subpart B of part III and in part IV of this article:

(a) (1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions

of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided.

Notwithstanding the foregoing, a tax imposed by a city or county authorized under this subdivision shall not include the tax imposed on charges for admission to race tracks and simulcast facilities under subdivision (f) of section eleven hundred five of this chapter. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and all sales of fuel sold for use in commercial aircraft and general aviation aircraft; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment and electricity exemption provided for in subdivision (ee), the commercial solar energy systems equipment and electricity exemption provided for in subdivision (ii), the commercial

fuel cell electricity generating systems equipment and electricity generated by such equipment exemption provided for in subdivision (kk) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to such residential solar energy systems equipment and electricity exemption, such commercial solar energy systems equipment and electricity exemption, commercial fuel cell electricity generating systems equipment and electricity generated by such equipment exemption or such clothing and footwear exemption.

(2) A sale of tangible personal property to a person for use by him in performing the services of laundering, drycleaning, tailoring, weaving, pressing, shoe repairing and shoe shining, subject to the tax imposed under the authority of paragraph (1) of this subdivision, shall not be deemed a purchase for resale for purposes of the taxes imposed by article twenty-eight and pursuant to the authority of this article. The transitional provisions contained in section eleven hundred six shall apply to a tax imposed under the authority of clauses (A) or (B) of paragraph (1) of this subdivision in the same manner and to the same extent as applicable to the taxes imposed under subdivision (c) of section eleven hundred five except that an equivalent date shall be substituted to accord with the date when the tax imposed pursuant to the authority of such clause shall become effective.

(3) (i) Notwithstanding any other provision of law to the contrary but not with respect to cities subject to the provisions of section eleven hundred eight of this chapter, any city or county, except a county wholly contained within a city, may provide that the taxes imposed, pursuant to this subdivision, by such city or county on the retail sale or use of fuel oil and coal used for residential purposes, the retail sale or use of wood used for residential heating purposes, the sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services used for residential purposes and the use of gas or electricity used for residential purposes may be imposed at a lower rate than the uniform local rate imposed pursuant to the opening paragraph of this section, as long as such rate is one of the rates authorized by such paragraph or such sale or use may be exempted from

such taxes. Provided, however, such lower rate must apply to all such energy sources and services and at the same rate and no such exemption may be enacted unless such exemption applies to all such energy sources and services. The provisions of this subparagraph shall not apply to a sale or use of diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle.

(ii) The transitional provisions in subdivision (c) of section eleven hundred five-A shall apply to a change in rate or to an exemption adopted pursuant to the authority of this paragraph in the same manner and to the same extent as applicable under section eleven hundred five-A except that equivalent dates shall be substituted to accord with the date when the rate or exemption adopted pursuant to this paragraph shall become effective. The provisions in subdivisions (d) and (e) of section eleven hundred five-A shall apply so far as such provisions can be made applicable under this paragraph.

(iii) Notwithstanding the provisions of subdivision (d) of this section to the contrary, any local law, ordinance or resolution, enacted pursuant to the authority of this paragraph, (A) may be made applicable to the quarterly period ending February twenty-ninth, nineteen hundred eighty if a certified copy of such law, ordinance or resolution is mailed by registered mail to the state tax commission at its office in Albany on or before November twentieth, nineteen hundred seventy-nine, (B) may go into effect on January first, nineteen hundred eighty, if a certified copy of such law, ordinance or resolution is mailed by registered mail to the state tax commission at its office in Albany at least thirty days prior to such effective date and (C) may exempt from tax, effective October first, nineteen hundred eighty, the energy sources and services described in subparagraph (i) of this paragraph.

(iv) Notwithstanding any other provision of law, the one percent additional tax which Cattaraugus county is authorized to adopt pursuant to the opening paragraph of this section shall not be imposed on the retail sale or use of the energy sources and services described in subparagraph (i) of this paragraph.

(4) Notwithstanding any other provision of law to the contrary, any local law enacted by any city of one million or more that imposes the

taxes authorized by this subdivision (i) may omit the exception provided in subparagraph (ii) of paragraph three of subdivision (c) of section eleven hundred five of this chapter for receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining; (ii) may impose the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter at a rate in addition to the rate prescribed by this section not to exceed two percent in multiples of one-half of one percent; (iii) shall provide that the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter does not apply to facilities owned and operated by the city or an agency or instrumentality of the city or a public corporation the majority of whose members are appointed by the chief executive officer of the city or the legislative body of the city or both of them; (iv) shall not include any tax on receipts from, or the use of, the services described in paragraph seven of subdivision (c) of section eleven hundred five of this chapter; (v) shall provide that, for purposes of the tax described in subdivision (e) of section eleven hundred five of this chapter, "permanent resident" means any occupant of any room or rooms in a hotel or short term rental unit for at least one hundred eighty consecutive days with regard to the period of such occupancy; (vi) may omit the exception provided in paragraph one of subdivision (f) of section eleven hundred five of this chapter for charges to a patron for admission to, or use of, facilities for sporting activities in which the patron is to be a participant, such as bowling alleys and swimming pools; (vii) may provide the clothing and footwear exemption in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, and, notwithstanding any provision of subdivision (d) of this section to the contrary, any local law providing for such exemption or repealing such exemption, may go into effect on any one of the following dates: March first, June first, September first or December first; (viii) shall omit the exemption provided in paragraph forty-one of subdivision (a) of section eleven hundred fifteen of this chapter; (ix) shall omit the exemption provided in subdivision (c) of section eleven hundred fifteen of this chapter insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas,

electricity, refrigeration or steam; (x) shall omit, unless such city elects otherwise, the provision for refund or credit contained in clause six of subdivision (a) or in subdivision (d) of section eleven hundred nineteen of this chapter; (xii) shall omit, unless such city elects otherwise, the exemption for residential solar energy systems equipment and electricity provided in subdivision (ee) of section eleven hundred fifteen of this chapter; (xiii) shall omit, unless such city elects otherwise, the exemption for commercial solar energy systems equipment and electricity provided in subdivision (ii) of section eleven hundred fifteen of this chapter; and

** (xiv) shall exclude from the operation of such local taxes all sales of fuel sold for use in commercial aircraft and general aviation aircraft.

** NB There are 2 sbpar (xiv)'s

** (xiv) shall omit, unless such city elects otherwise, the exemption for commercial fuel cell electricity generating systems equipment and electricity generated by such equipment provided in subdivision (kk) of section eleven hundred fifteen of this chapter.

** NB There are 2 sbpar (xiv)'s

Any reference in this chapter or in any local law, ordinance or resolution enacted pursuant to the authority of this article to former subdivisions (n) or (p) of this section shall be deemed to be a reference to clauses (xii) or (xiii) of this paragraph, respectively, and any such local law, ordinance or resolution that provides the exemptions provided in such former subdivisions (n) and/or (p) shall be deemed instead to provide the exemptions provided in clauses (xii) and/or (xiii) of this paragraph.

(b) (1) Or, one or more of the taxes described in subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, at the same uniform rate, including the transitional provisions in section eleven hundred six of this chapter covering such taxes, but not the taxes described in subdivisions (a) and (c) of section eleven hundred five of this chapter. Provided, further, that where the tax described in subdivision (b) of section eleven hundred five of this chapter is imposed, the compensating use taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter shall also be imposed. Provided, further, that where the taxes described

in subdivision (b) of section eleven hundred five of this chapter are imposed, such taxes shall omit: (A) the provision for refund or credit contained in subdivision (d) of section eleven hundred nineteen of this chapter with respect to such taxes described in such subdivision (b) of section eleven hundred five unless such city or county elects to provide such provision or, if so elected, to repeal such provision; (B) the exemption provided in paragraph two of subdivision (ee) of section eleven hundred fifteen of this chapter unless such county or city elects otherwise; (C) the exemption provided in paragraph two of subdivision (ii) of section eleven hundred fifteen of this chapter, unless such county or city elects otherwise; and (D) the exemption provided in paragraph two of subdivision (kk) of section eleven hundred fifteen of this chapter, unless such county or city elects otherwise; and provided further that where the tax described in subdivision (f) of such section eleven hundred five is imposed, such tax shall not apply to charges for admission to race tracks and simulcast facilities.

(2) In respect to the taxes described in such subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter and in such clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter and the transitional provisions in such section eleven hundred six covering those taxes, all provisions of a local law imposing any such tax, except as to rate and except as otherwise provided herein, shall be identical with the corresponding provisions in such article twenty-eight of this chapter, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight of this chapter can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article; provided, however, that any local law enacted by any city of one million or more, imposing the taxes authorized by this subdivision, shall omit the exemption provided in subdivision (c) of section eleven hundred fifteen of this chapter and may omit the exception provided in paragraph (1) of subdivision (f) of section eleven hundred five of this chapter for charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. The transitional provisions contained in subdivision (d) of section eleven hundred six of this chapter shall apply in the same

manner and to the same extent to a tax imposed by omitting the exception in paragraph (1) of subdivision (f) of section eleven hundred five of this chapter, as described in the preceding sentence, except that an equivalent date shall be substituted to accord with the date when the tax so imposed becomes effective. The tax described in any one of such subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, including the related transitional provisions in such section eleven hundred six of this chapter, and the taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter where the tax described in such subdivision (b) of section eleven hundred five of this chapter is imposed, may not be imposed by a city or county unless the local law, ordinance or resolution imposes such tax so as to include all portions and all types of receipts, charges or rents, as the case may be, subject to state tax under the applicable subdivision of section eleven hundred five of this chapter and uses subject to tax under the applicable provisions of section eleven hundred ten of this chapter where the tax described in subdivision (b) of section eleven hundred five of this chapter is imposed.

(3) (i) Notwithstanding any other provision of law to the contrary but not with respect to cities subject to the provisions of section eleven hundred eight of this chapter, any city or county, except a county wholly contained within a city, may provide that the tax imposed, pursuant to this subdivision, by such city or county on the sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services of whatever nature used for residential purposes and on the use of gas or electricity used for residential purposes may be imposed at a lower rate than the uniform local rate imposed pursuant to the opening paragraph of this section, as long as such rate is one of the rates authorized by such paragraph or such sale or use may be exempted from such taxes. Provided, however, such lower rate must apply to all such energy sources and services and at the same rate and no such exemption, other than the exemption provided for in subdivision (ee) of section eleven hundred fifteen of this chapter, if such exemption is elected by such city or county, may be enacted unless such exemption applies to all such energy sources and services.

(ii) The transitional provisions in subdivision (c) of section eleven hundred five-A shall apply to a change in rate or to an exemption adopted pursuant to the authority of this paragraph in the same manner and to the same extent as applicable under section eleven hundred five-A except that equivalent dates shall be substituted to accord with the date when the rate or exemption adopted pursuant to this paragraph shall become effective. The provisions in subdivisions (d) and (e) of section eleven hundred five-A shall apply so far as such provisions can be made applicable under this paragraph.

(iii) Notwithstanding the provisions of subdivision (d) of this section to the contrary, any local law, ordinance or resolution enacted pursuant to the authority of this paragraph, (A) may be made applicable to the quarterly period ending February twenty-ninth, nineteen hundred eighty if a certified copy of such law, ordinance or resolution is mailed by registered mail to the state tax commission at its office in Albany on or before November twentieth, nineteen hundred seventy-nine, (B) may go into effect on January first, nineteen hundred eighty, if a certified copy of such law, ordinance or resolution is mailed by registered mail to the state tax commission at its office in Albany at least thirty days prior to such effective date and (C) may exempt from tax, effective October first, nineteen hundred eighty; the energy sources and services described in subparagraph (i) of this paragraph.

(4) Notwithstanding any provision of this article to the contrary, a county, city or school district which, pursuant to the authority of this article, imposes the tax described in subdivision (b) of section eleven hundred five of this chapter without also imposing all of the other taxes described in subdivision (a) of this section shall not be authorized to impose the sales tax on prepaid telephone calling service described in subparagraph (D) of paragraph one of subdivision (b) of such section eleven hundred five or the compensating use tax described in clause (G) of subdivision (a) of section eleven hundred ten of this chapter; and any reference in this article to the tax described in such subdivision (b) of section eleven hundred five and any reference in this article to the tax described in such clause (G) of subdivision (a) of section eleven hundred ten shall be deemed not to include the sales tax on prepaid telephone calling service or the compensating use tax described in such clause (G) of subdivision (a) of section eleven

hundred ten, in cases where the tax described in subdivision (b) of such section eleven hundred five is imposed by a county, city or school district which does not also impose all of the other taxes described in subdivision (a) of this section.

(c) Notwithstanding the prior provisions of this section, where a city has, pursuant to section twelve hundred twenty-four of this article, pre-empted the right to impose any of the taxes described in subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter by imposing one or more of such taxes, and, if the taxes described in such subdivision (b) of section eleven hundred five of this chapter are imposed, the compensating use taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter, as provided for in subdivision (b) of this section, the county in which such city is located may still impose those taxes authorized under subdivision (a) or (b) of this section not pre-empted by such city. Within areas in such county but outside of such city, the county shall continue to be authorized and empowered to impose the taxes as authorized in subdivisions (a) and (b) of this section, without any diminution in the county's right to impose such taxes in areas outside such city.

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter, or electing or repealing the exemption for residential solar equipment and electricity in subdivision (ee) of section eleven hundred fifteen of this article, or the exemption for commercial solar equipment and electricity in subdivision (ii) of section eleven hundred fifteen of this article, or electing or repealing the exemption for commercial fuel cell electricity generating systems equipment and electricity generated by such equipment in subdivision (kk) of section eleven hundred fifteen of this article must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a local law, ordinance

or resolution providing for the exemption described in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter or repealing any such exemption or a local law, ordinance or resolution providing for a refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision so provided must go into effect only on March first. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

(e) Certified copies of any local law, ordinance or resolution described in subdivision (d) of this section shall also be filed with the city or county clerk, the secretary of state and the state comptroller within five days after the date it is enacted. Certified copies of any other local law, ordinance or resolution enacted pursuant to this section shall be filed with the state tax commission, the city or county clerk, the secretary of state and the state comptroller within five days after the date it is enacted.

(f) On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law, any taxes imposed pursuant to this section by the city in aid of which such corporation was created and, except as hereinafter provided for in subdivisions (h) and (j) of this section, the power of such city to adopt and amend local laws, ordinances or resolutions imposing taxes pursuant to the authority of such section shall, notwithstanding any provision of this article to the contrary, be

suspended until the later of July first, two thousand eight, or the last day of the month in which all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged together with interest thereon and interest on unpaid installments of interest.

(g) All of the enabling act provisions, which authorized the imposition of the taxes suspended pursuant to this section, the local laws, ordinances, and resolutions imposing such taxes, any regulations promulgated with respect to such taxes, including the provisions with respect to assessment, payment, determination, collection and refund of such taxes, requirements for filing returns, preservation of records and disposition of revenue shall continue in full force and effect with respect to all such taxes accrued up to the effective date of such suspension.

(h) Notwithstanding the provisions of subdivision (f) of this section, any city having a population of one million or more in which a municipal assistance corporation is created under article ten of the public authorities law shall continue to be authorized and empowered to adopt and amend local laws, imposing taxes, at a rate not to exceed four percent on the receipts of sales from the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining, and charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant such as bowling alleys and swimming pools. Such taxes shall be administered, collected and distributed by the state tax commission as provided in subpart B of part III and in part IV of this article.

(i) On the first day of the first month following the month in which the taxes provided for in section eleven hundred seven of this chapter are terminated, the suspension provided for in subdivision (f) of this section shall terminate and the sales and compensating use taxes imposed by a city having a population of one million or more immediately prior to the effective date of the suspension shall go into full force and effect, provided that the resumed taxes, and any local law imposing those taxes, shall incorporate amendments to this article and article twenty-eight of this chapter so that the resumed taxes are, except as otherwise provided by law, identical to the taxes authorized to be imposed by the city.

(j) Notwithstanding the provisions of subdivision (f) of this section, the city of Troy shall continue to be authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing taxes pursuant to the authority of this section during the period that (i) the municipal assistance corporation for the city of Troy created under article ten of the public authorities law is in existence, and (ii) pursuant to section two of chapter one hundred eighty-seven of the laws of nineteen hundred ninety-five, as it may be amended, the tax described in section eleven hundred eight of this chapter is not imposed in such city.

(m) Taxes imposed on native American nation or tribe lands. Where a non-native American person purchases, for such person's own consumption, any retail sale item on native American nation or tribe land recognized by the federal government and reservation land recognized as such by the state of New York, the commissioner shall promulgate rules and regulations necessary to implement the collection of sales, excise and use taxes on such retail sale items.

(o) Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: any city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect, acting through its local legislative body, is hereby authorized and empowered to elect to exempt from such taxes, or reduce the rate of such taxes on, the same residential energy sources and services, in the same manner as described in subparagraph (i) of paragraph three of subdivision (a) of this section, by enacting a local law or resolution in the form prescribed by the commissioner pursuant to section twelve hundred fifty-seven of this article; whereupon, upon compliance with the provisions of subdivisions (d) and (e) of this section, such enactment of such local law or resolution shall be deemed to be an amendment to section eleven hundred seven of this chapter and such section eleven hundred seven shall be deemed to incorporate such exemption of or reduced rate on such energy sources and services as if it had been duly enacted by the state legislature and approved by the governor.

1210-A. Sales and compensating use tax for purposes of the Suffolk

county drinking water protection program. (a) In addition to the taxes imposed by section twelve hundred ten or any other provision of this article, the county of Suffolk is hereby authorized and empowered to adopt and amend a local law, ordinance or resolution imposing within the territorial limits of said county an additional sales and compensating use tax at the rate of one-quarter of one percent for the period beginning December first, nineteen hundred eighty-four and ending November thirtieth, two thousand sixty, which tax shall be identical to the tax imposed by said county pursuant to section twelve hundred ten of this article. Except as hereinafter provided, all provisions of this article, including the definition and exemption provisions and the provisions relating to the administration, collection and distribution by the commissioner, shall apply for purposes of the tax imposed by this section in the same manner and with the same force and effect as if the language of this article had been incorporated in full in this section and had expressly referred to the tax imposed by this section; provided, however, that any provision relating to a maximum rate shall be calculated without reference to the additional sales and compensating use tax herein authorized. For purposes of part IV of this article, relating to the disposition of revenues resulting from taxes collected and administered by the commissioner, the additional sales and compensating use tax herein provided shall be deemed to be imposed under the authority of section twelve hundred ten of this article and all provisions relating to the deposit, administration and disposition of taxes, penalties and interest relating to a tax imposed by a county under the authority of section twelve hundred ten of this article shall, except as otherwise specifically provided in this section, apply to the additional sales and compensating use tax imposed pursuant to this section.

(b) Notwithstanding any other provision of this article to the contrary, the net collections from the tax imposed pursuant to subdivision (a) of this section for the period beginning December first, nineteen hundred eighty-four and ending November thirtieth, nineteen hundred eighty-eight shall, upon payment to the county of Suffolk, and moneys due said fund pursuant to subdivisions (c) and (d) of this section, be deposited in a special fund, to be designated as an assessment stabilization reserve fund, to be created by said county

therefor separate and apart from any other funds and accounts of the county. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund. Moneys in said fund may be appropriated from and transferred to or expended in any fiscal year only for the purposes and in the order as follows:

(i) to an account or accounts for the Southwest Sewer District of said county in such amount or amounts as shall be determined by the county executive of said county and approved by the county legislature of said county as necessary to stabilize assessments in such sewer district in any given year;

(ii) to an account or accounts for any other sewer district established by the county of Suffolk in such amount or amounts as shall be determined by the county executive of said county and approved by the county legislature of said county as necessary to stabilize assessments in any such sewer district in any given year; and

(iii) for distribution to the towns and villages within said county which have established or created a sewer district or benefitted area to provide sewer improvements or constructed or are constructing a sewer or sewerage system in such amount or amounts as shall be determined by the county executive of said county and approved by the county legislature of said county as necessary to stabilize assessments or taxes, as the case may be, in any such sewer district or benefitted area or for any such sewer system in any given year.

(c) To the extent necessary to continue the tax stabilization of those sewer districts receiving appropriations pursuant to subdivision (b) of this section, the net collections from the tax imposed pursuant to subdivision (a) of this section for the period beginning December first, nineteen hundred eighty-eight and ending November thirtieth, nineteen hundred eighty-nine, together with interest thereon at a rate equal to the interest rate for one year United States Treasury bills as of the date such funds were invested, shall constitute a guarantee and shall be made available and paid to the assessment stabilization reserve fund set forth in subdivision (b) of this section on a first priority basis from

all of the net collections of the tax imposed pursuant to this section.

(d) Notwithstanding any other provision of this article to the contrary, the net collections from the tax imposed pursuant to subdivision (a) of this section for the period beginning December first, nineteen hundred eighty-eight and ending November thirtieth, two thousand sixty shall, upon payment to the county of Suffolk, be deposited in a special fund, to be designated as a drinking water protection reserve fund, to be created by said county therefor separate and apart from any other funds and accounts of the county. Moneys in such fund shall be deposited in one or more of the banks or trust companies designated, in the manner provided by law, as a depository of the funds of such county. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund. Moneys in said fund may be appropriated from and transferred to or expended in any fiscal year only for the purposes of making payments pursuant to subdivisions (b) and (c) of this section for the period beginning December first, nineteen hundred eighty-eight, to the extent that moneys in said fund are remaining, and if authorized by local law, for the following purposes:

(i) for the purposes of specific environmental protection (acquisition of: farmland development rights; open space, wetlands, woodlands, pine barrens and other lands for passive recreational uses; lands for hamlet greens, hamlet parks, pocket parks, historic parks, cultural parks and other lands for active/parkland recreational uses; lands necessary for maintaining and protecting the quality of surface water, groundwater and coastal resources);

(ii) for a water quality protection and restoration program or programs and land stewardship initiatives;

(iii) for the purposes of county-wide property tax protection; and

(iv) for the purpose of sewer taxpayer protection (25% of the net collections from the tax). Beginning with the first fiscal year after the adoption of the water quality restoration fund, a portion of the net collections of such tax apportioned for this purpose as provided for herein, shall be transferred to the water quality restoration fund, established pursuant to subdivision eleven of section two hundred

fifty-six-b of the county law. Said revenues shall be dedicated solely to funding individual septic system projects as defined in such subdivision. The portion of net collections of the tax transferred to the water quality restoration fund each year shall be as follows:

Year	Percentage
1	5%
2	5%
3	5%
4	5%
5	20%
6	30%
7	40%
8	50%
9	70%
10	70%

For all subsequent years, the portion of net collections transferred to the water quality restoration fund shall be fifty percent.

Notwithstanding any special or local law, resolution or charter provision to the contrary, moneys in said fund which have not been appropriated from and transferred to or expended in any fiscal year for the purposes of making payments pursuant to subdivisions (b) and (c) of this section, may alternatively be appropriated for the purposes of paying debt service on any new indebtedness incurred after the effective date of the chapter of the laws of two thousand one that enacted this paragraph pursuant to the local finance law in order to effectuate the purposes described in paragraph (i) or (ii) of this subdivision. For the purpose of allocating moneys in said fund pursuant to local law among the purposes described in paragraphs (i), (ii), (iii) and (iv) of this subdivision, moneys applied to the payment of debt service under the authority of the previous sentence shall be considered by said county to have been expended for the purposes for which such indebtedness was incurred.

§ 1210-B. Sales and compensating use tax within Suffolk county for purposes of stabilizing property taxes and either paying certain

judgments, compromises or settlements or paying debt service on obligations of said county issued to pay said judgments, compromises or settlements. (a) In addition to the taxes imposed by section twelve hundred ten or any other provision of this article, the county of Suffolk is hereby authorized and empowered to adopt and amend a local law, ordinance or resolution imposing within the territorial limits of said county an additional sales and compensating use tax at the rate of one-quarter of one percent for the period beginning December first, nineteen hundred ninety-seven and ending November thirtieth, two thousand seventeen, which tax shall be identical to the tax imposed by said county pursuant to section twelve hundred ten of this article. Except as hereinafter provided, all provisions of this article, including the definition and exemption provisions and the provisions relating to the administration, collection and distribution by the commissioner, shall apply for purposes of the tax imposed by this section in the same manner and with the same force and effect as if the language of this article had been incorporated in full in this section and had expressly referred to the tax imposed by this section; provided, however, that any provision relating to a maximum rate shall be calculated without reference to the additional sales and compensating use tax herein authorized. For purposes of part IV of article twenty-nine of this chapter, relating to the disposition of revenues resulting from taxes collected and administered by the commissioner, the additional sales and compensating use tax herein provided shall be deemed to be imposed under the authority of section twelve hundred ten of this article and all provisions relating to the deposit, administration and disposition of taxes, penalties and interest relating to a tax imposed by a county under the authority of section twelve hundred ten of this article shall, except as otherwise specifically provided in this section, apply to the additional sales and compensating use tax imposed pursuant to this section.

(b) Notwithstanding any other provision of this article to the contrary, the net collections from the tax imposed pursuant to subdivision (a) of this section shall be deposited in a special fund, to be designated as the LILCO tax certiorari payment and securitization fund to be created by said county therefor separate and apart from any other funds and accounts of the county. Moneys in such fund shall be

deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund. Moneys in said fund may be appropriated from and transferred to or expended in any fiscal year only for the purpose of either paying a tax certiorari judgment, or compromise or settlement thereof, payable by said county in a proceeding entitled In the Matter of the Application of LONG ISLAND LIGHTING COMPANY, Petitioner, and LONG ISLAND POWER AUTHORITY, Intervenor-Petitioner against THE ASSESSOR AND THE BOARD OF ASSESSMENT REVIEW FOR THE TOWN OF BROOKHAVEN, Respondents, and THE SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT AND THE COUNTY OF SUFFOLK, Intervenor-Respondents, for Review of the Tax Assessments Under Article 7 of the Real Property Tax Law for the 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91, and 1991-92 Tax Years (the "LILCO phase 2 judgement"), paying any other tax certiorari judgment against or compromise or settlement of a tax certiorari claim or proceeding by said county resulting from proceedings commenced by the Long Island lighting company or any successor in interest, paying a judgment against or compromise or settlement resulting from a proceeding entitled LONG ISLAND POWER AUTHORITY and LONG ISLAND LIGHTING COMPANY, against SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT, COUNTY OF SUFFOLK, TOWN OF BROOKHAVEN, SHOREHAM WADING RIVER PUBLIC LIBRARY DISTRICT, WADING RIVER FIRE DISTRICT, WADING RIVER LIGHTING DISTRICT (the "the "PILOT payment judgment"), or paying the principal, interest and premium, if any, on bonds or bond anticipation notes hereinafter issued by the county of Suffolk to pay any such LILCO phase 2 judgment, PILOT payment judgment or compromise or settlement thereof, or any other tax certiorari judgment against or compromise or settlement of a tax certiorari claim or proceeding by said county resulting from proceedings commenced by the Long Island lighting company or any successor in interest.

(c) At the end of the last day of the sales tax quarter in which Suffolk county shall have either paid or provided for the payment of all such judgments or compromises or settlements in full or paid or provided for the payment of the principal, interest and premium, if any, on all

bonds or bond anticipation notes issued by said county to pay such judgments or compromises or settlements, the authorization granted in subdivision (a) of this section shall expire. Despite such expiration, the provisions of this section and any regulations promulgated thereunder, including the provisions with respect to assessment, payment, termination, collection and refund of such taxes, the requirements for filing returns, preservation of records and disposition of revenue shall continue in full force and effect with respect to all such taxes accrued up to the effective date of such expiration.

§ 1210-C. Sales and compensating use tax for purposes of the Schenectady county metroplex development authority. (a) In addition to the taxes authorized to be imposed by section twelve hundred ten of this article or any other provision of this article, the county of Schenectady is hereby authorized and empowered to adopt and amend a local law, ordinance or resolution imposing within the territorial limits of said county sales and compensating use taxes at a rate which is one-half of one percent additional to the three percent rate authorized in section twelve hundred ten of this article for the period beginning on or after September first, nineteen hundred ninety-eight and ending August thirty-first, two thousand thirty-eight, which taxes shall be identical to the taxes imposed by said county pursuant to section twelve hundred ten of this article. Except as hereinafter provided, all provisions of this article, including the definition and exemption provisions and the provisions relating to the administration, collection and distribution by the commissioner, shall apply for purposes of the taxes authorized to be imposed by this section in the same manner and with the same force and effect as if the language of this article had been incorporated in full in this section and had expressly referred to the taxes authorized to be imposed by this section; provided, however, that any provision of this article relating to a maximum rate shall be calculated without reference to the additional rate authorized by this section. For purposes of part IV of this article, relating to the disposition of revenues resulting from taxes collected and administered by the commissioner, the additional sales and compensating use taxes authorized by this section shall be deemed to be imposed under the

authority of section twelve hundred ten of this article and all provisions relating to the deposit, administration and disposition of taxes, penalties and interest relating to taxes imposed by a county under the authority of section twelve hundred ten of this article shall, except as otherwise specifically provided in this section, apply to the additional sales and compensating use tax imposed pursuant to the authority of this section.

(b) Notwithstanding any other provision of this article to the contrary, the net collections from the tax imposed pursuant to subdivision (a) of this section for the period beginning on or after September first, nineteen hundred ninety-eight and ending August thirty-first, two thousand thirty-eight shall, upon payment to the county of Schenectady, be deposited in the Schenectady metroplex development authority support fund, pursuant to subdivision nine of section twenty-six hundred sixty-one of the public authorities law, with such fund to be designated as a special dedicated support fund, to be created by said county therefor separate and apart from any other funds and accounts of the county. Pending deposit from such Schenectady metroplex development authority support fund into the general fund of the Schenectady metroplex development authority, all moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such Schenectady metroplex development authority support fund.

(c) If the county of Schenectady does not impose the one-half of one percent rate of taxes authorized by subdivision (a) of this section during the period beginning September first, nineteen hundred ninety-eight and ending August thirty-first, two thousand thirty-eight, the county shall dedicate net collections from sales and compensating use taxes imposed during such period pursuant to the authority of section twelve hundred ten of this article at the rate of one-half of one percent and shall quarterly deposit such net collections in the Schenectady metroplex development authority support fund established in accordance with subdivision (b) of this section.

(d) On January first, nineteen hundred ninety-nine, and then quarterly thereafter, the director of finance of Schenectady county shall transfer seventy percent of all net collections from the one-half of one percent

sales and compensating use tax and deposited in the Schenectady metroplex development authority support fund to the authority for deposit in the authority's general fund. The authority may use such portion of such dedicated net collections received for any lawful purpose or power of the authority. On January first, nineteen hundred ninety-nine, and then quarterly thereafter, the director of finance of Schenectady county, after transferring seventy percent of such net collections to the authority for deposit in the authority's general fund, shall transfer all remaining monies in the Schenectady metroplex development authority support fund to the Schenectady county real property tax abatement and economic development fund.

§ 1210-E. Sales and compensating use taxes within Herkimer county. In addition to the taxes imposed by section twelve hundred ten of this subpart or any other provision of law, the county of Herkimer is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing within the territorial limits of such county additional sales and compensating use taxes at the rate of one-quarter of one percent for the period beginning December first, two thousand seven and ending November thirtieth, two thousand twenty-seven, which taxes shall be identical to the taxes imposed by such county pursuant to the authority of section twelve hundred ten of this subpart. Except as hereinafter provided, all provisions of this article, including the definition and exemption provisions and the provisions relating to the administration, collection and distribution by the commissioner, shall apply for purposes of the taxes authorized by this section in the same manner and with the same force and effect as if the language of this article had been incorporated in full in this section and had expressly referred to the taxes authorized by this section; provided, however, that any provision relating to a maximum rate shall be calculated without reference to the rate of additional sales and compensating use taxes herein authorized. For purposes of part IV of this article, relating to the disposition of revenues resulting from taxes collected and administered by the commissioner, the additional sales and compensating use taxes authorized by this section imposed under the authority of section twelve hundred ten of this subpart and all

provisions relating to the deposit, administration and disposition of taxes, penalties and interest relating to taxes imposed by a county under the authority of section twelve hundred ten of this subpart shall, except as otherwise provided in this section, apply to the additional sales and compensating use taxes authorized by this section.

§ 1210-F. Sales and compensating use tax for purposes of the Suffolk county water quality restoration fund. (a) In addition to the taxes imposed by section twelve hundred ten, section twelve hundred ten-A, or any other provision of this article, the county of Suffolk is hereby authorized and empowered to adopt and amend a local law, ordinance or resolution, subject to a mandatory referendum, in accordance with the provisions set forth in section twenty-three of the municipal home rule law, imposing within the territorial limits of said county an additional sales and compensating use tax at the rate of one-eighth of one percent for the period beginning March first, two thousand twenty-four and ending February twenty-ninth, two thousand sixty, which tax shall be identical to the tax imposed by said county pursuant to section twelve hundred ten of this article. Provided, however, that such local law, ordinance or resolution shall not take effect unless such county complies with the provisions of subdivisions (d) and (e) of section twelve hundred ten of this subpart and provides notice to the commissioner in accordance with the provisions of subdivision (d) of such section of the approval of such resolution by the electors. Except as hereinafter provided, all provisions of this article, including the definition and exemption provisions and the provisions relating to the administration, collection and distribution by the commissioner, shall apply for purposes of the tax imposed by this section in the same manner and with the same force and effect as if the language of this article had been incorporated in full in this section and had expressly referred to the tax imposed by this section; provided, however, that any provision relating to a maximum rate shall be calculated without reference to the additional sales and compensating use tax herein authorized. For purposes of part IV of this article, relating to the disposition of revenues resulting from taxes collected and administered by the commissioner, the additional sales and compensating use tax

herein provided shall be deemed to be imposed under the authority of section twelve hundred ten of this article and all provisions relating to the deposit, administration and disposition of taxes, penalties and interest relating to a tax imposed by a county under the authority of section twelve hundred ten of this article shall, except as otherwise specifically provided in this section, apply to the additional sales and compensating use tax imposed pursuant to this section.

(b) Notwithstanding any other provision of this article to the contrary, the net collections from the tax imposed pursuant to subdivision (a) of this section for the period beginning March first, two thousand twenty-four and ending February twenty-ninth, two thousand sixty shall, upon payment to the county of Suffolk, be deposited in a special fund, to be designated as the water quality restoration fund to be created by said county therefor separate and apart from any other funds and accounts of the county. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law and in no event shall moneys deposited be transferred to any other account. In addition to the net collections from the tax, deposits into the fund may include revenues of Suffolk county from whatever source and may include the acceptance of gifts. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund. Moneys in said fund may be appropriated from and transferred to or expended in any fiscal year only for the purposes authorized by subdivision eleven of section two hundred fifty-six-b of the county law.

§ 1211. Taxes of certain cities and school districts administered by state tax commission. (a) On request by a majority vote of the whole number of the school authorities of the school district or districts which are coterminous with, partly within or wholly within a city having a population of less than one hundred twenty-five thousand, such city is hereby authorized and empowered to adopt and amend local laws imposing for school district purposes the taxes authorized under section twelve hundred ten, at the rate of one-half, one, one and one-half, two, two

and one-half or three percent which rate shall be uniform for all taxes imposed pursuant to the authority of this section; provided, however, where a city imposes a tax under the authority of both sections twelve hundred ten and twelve hundred eleven, the aggregate rate of the taxes imposed pursuant to both sections cannot exceed three percent.

(b) A local law imposing such a tax shall be effective only during the period that each of the school districts partly within and partly without such city, by a majority vote of the whole number of its school authorities, shall impose an identical tax, at the same uniform rate, within that part of its territorial limits outside of such city. Such school authorities are hereby authorized and empowered to impose such tax so as to be effective only during the period when the tax imposed by the city on areas of school districts within the city shall be effective. Taxes so imposed by such a city and by such school districts shall be administered and collected by the state tax commission as provided in subpart B of part III of this article.

(c) All actions taken by majority votes of school authorities pursuant to this section shall be deemed resolutions under this article and shall be official records of the school districts in which they are taken.

(d) A local law or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the following dates: March first, June first, September first or December first, subject to further requirement as to effective date provided for in subdivision (b) of this section; provided, that a local law or resolution providing for a refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision so provided must go into effect only on March first, subject to further requirement as to effective date provided for in subdivision (b) of this section. No such local law or resolution shall be effective unless a certified copy of such local law or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or

certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

(e) Certified copies of any local law or resolution described in subdivision (d) of this section shall also be filed with the city clerk, state department of education, the secretary of state and the state comptroller within five days after the date it is enacted. Certified copies of any other local law or resolution enacted pursuant to this section shall be filed with the state tax commission, the city clerk, the state department of education, the secretary of state and the state comptroller within five days after the date it is enacted.

§ 1212. Certain taxes of school districts administered by commissioner. (a) Any school district which is coterminous with, partly within or wholly within a city having a population of less than one hundred twenty-five thousand, is hereby authorized and empowered, by majority vote of the whole number of its school authorities, to impose for school district purposes, within the territorial limits of such school district and without discrimination between residents and nonresidents thereof, the taxes described in subdivision (b) of section eleven hundred five (but excluding the tax on prepaid telephone calling services) and the taxes described in clauses (E) and (H) of subdivision (a) of section eleven hundred ten, including the transitional provisions in subdivision (b) of section eleven hundred six of this chapter, so far as such provisions can be made applicable to the taxes imposed by such school district and with such limitations and special provisions as are set forth in this article, such taxes to be imposed at the rate of one-half, one, one and one-half, two, two and one-half or three percent which rate shall be uniform for all portions and all types of receipts and uses subject to such taxes. In respect to such taxes, all provisions

of the resolution imposing them, except as to rate and except as otherwise provided herein, shall be identical with the corresponding provisions in such article twenty-eight of this chapter, including the applicable definition and exemption provisions of such article, so far as the provisions of such article twenty-eight of this chapter can be made applicable to the taxes imposed by such school district and with such limitations and special provisions as are set forth in this article. The taxes described in subdivision (b) of section eleven hundred five (but excluding the tax on prepaid telephone calling service) and clauses (E) and (H) of subdivision (a) of section eleven hundred ten, including the transitional provision in subdivision (b) of such section eleven hundred six of this chapter, may not be imposed by such school district unless the resolution imposes such taxes so as to include all portions and all types of receipts and uses subject to tax under such subdivision (but excluding the tax on prepaid telephone calling service) and clauses. Provided, however, that, where a school district imposes such taxes, such taxes shall omit the provision for refund or credit contained in subdivision (d) of section eleven hundred nineteen of this chapter with respect to such taxes described in such subdivision (b) of section eleven hundred five unless such school district elects to provide such provision or, if so elected, to repeal such provision, and shall omit the exemptions provided in paragraph two of subdivision (ee) and paragraph two of subdivision (ii) of section eleven hundred fifteen of this chapter unless such school district elects otherwise, and shall omit the exemption provided in paragraph two of subdivision (kk) of section eleven hundred fifteen of this chapter unless such school district elects otherwise.

(b) A tax so imposed shall be in addition to any tax which a county or city may impose or may be imposing pursuant to this article or any other law, and may be so imposed notwithstanding any inconsistent provisions of this article or of any other law and notwithstanding that the county or city may impose or may be imposing the taxes authorized by section twelve hundred ten at the maximum rate authorized therefor.

(c) No such action to impose the taxes or provide or repeal the exemptions authorized by subdivision (a) of this section shall be taken by a school district until after the school authorities thereof shall have held a public hearing thereon, after notice given in the manner

required by law for the giving of notice of the annual meeting of the school district, except that if it be a city school district such notice shall be given in the manner required by law for a public hearing on its tentative budget.

(d) All actions taken by majority votes of school authorities pursuant to this section shall be deemed resolutions under this article and shall be official records of the school district in which they are taken.

(e) A resolution imposing a tax pursuant to this section, increasing or decreasing the rate of such tax, or repealing or suspending such tax must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a resolution providing for the refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision must go into effect only on March first. No such resolution shall be effective unless a certified copy of such resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution.

(f) Certified copies of any resolution described in subdivision (e) of this section shall also be filed with the state department of education, the secretary of state and the state comptroller within five days after the date it is enacted. Certified copies of any other resolution enacted pursuant to this section shall be filed with the commissioner, the state department of education, the secretary of state and the state comptroller within five days after the date it is enacted.

§ 1212-A. Certain taxes of cities of one million or more administered by commissioner of taxation and finance.--(a) Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend

local laws imposing in any such city: (1) a tax on receipts from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles, in any county within such city with a population density in excess of fifty thousand persons per square mile, at the rate of eight per centum, on receipts from every sale of such services, except receipts from the sale of such services to an individual resident of such county when such services are rendered on a monthly or longer-term basis at the principal location for the parking, garaging or storing of a motor vehicle owned or leased (but only in the case of a lease for a term of one year or more) by such individual resident. The population of a county shall be determined by reference to the latest federal census.

(i) For purposes of the tax authorized by paragraph one of this subdivision, the following terms shall mean:

(A) "Individual resident." A natural person who maintains in the county in which such tax is authorized to be imposed a permanent place of abode which is such person's primary residence.

(B) "Motor vehicle." A motor vehicle which is registered pursuant to the vehicle and traffic law at the address of the primary residence referred to in clause (A) of this subparagraph, or which is registered pursuant to the vehicle and traffic law and leased to an individual resident at the address of the primary residence referred to in clause (A) of this subparagraph, and which is not used in carrying on any trade, business or commercial activity.

(C) A "lease for a term of one year or more" shall not include any lease the term of which is less than one year, irrespective of the fact that the cumulative period for which such lease may be in effect is one year or more as the result of the right to exercise an option to renew or other like provision.

(ii) Notwithstanding any other provision of law to the contrary, for purposes of implementing the exemption of individual residents from the tax authorized by this paragraph, the commissioner of taxation and finance shall, subject to such terms and conditions as it may consider necessary, delegate to the commissioner of finance of any city imposing

such tax the power and authority to develop and administer reasonable and necessary procedures, including the use of exemption certificates for presentation to vendors, for determining entitlement to exemption from such tax, and to prescribe, subject to the approval of the commissioner of taxation and finance, rules and regulations necessary and appropriate in carrying out such responsibilities.

(iii) Any person who, in violation of any provision of law enacted pursuant to the authorization contained in this paragraph or any rule or regulation promulgated thereunder, obtains or uses a certificate of exemption relating to the exemption from the tax authorized by this paragraph, shall, if such violation was due to negligence or intentional disregard of such provision or rule or regulation (but without intent to defraud), be liable for a penalty of not more than one hundred dollars for each such violation, and, if such violation was due to fraud, be liable for a penalty of not more than five hundred dollars for each such violation. The commissioner of finance of any city imposing such tax shall have the power, in his discretion, to waive, reduce or compromise any penalty imposed pursuant to this paragraph. The penalties authorized by this subparagraph shall be in addition to any penalty provided by section eleven hundred forty-five of this chapter, and shall be paid and disposed of, and, if unpaid, shall be determined, assessed, collected and enforced, in the same manner as the tax authorized by this paragraph.

(iv) Notwithstanding this paragraph, section eleven hundred thirty-nine of this chapter or any other provision of law to the contrary, an individual resident shall not be entitled to a refund or credit with respect to any amount of additional tax which was paid to a vendor prior to the date such individual resident presented to the vendor a valid certificate of exemption from such tax.

(2) a tax, at the same uniform rate, but at a rate not to exceed four and one-half per centum, in multiples of one-half of one per centum, on the receipts from every sale of the following services: beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in

conjunction therewith; but excluding services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under title VIII of the education law, as amended, and excluding such services when performed on pets and other animals.

(3) a tax, at the same uniform rate, but at a rate not to exceed four and one-half per centum, in multiples of one-half of one per centum, on the receipts from every sale of any or all of the following services in whole or in part: credit rating, credit reporting, credit adjustment and collection services, including, but not limited to, those services provided by mercantile and consumer credit rating or reporting bureaus or agencies and credit adjustment or collection bureaus or agencies, whether rendered in written or oral form or in any other manner, except to the extent otherwise taxable under article twenty-eight of this chapter; notwithstanding the foregoing, collection services shall not include those services performed by a law office or a law and collection office, the maintenance or conduct of which constitutes the practice of law, if the services are performed by an attorney at law who has been duly licensed and admitted to practice law in this state. The local law imposing the taxes authorized by this paragraph may provide for exclusions and exemptions in addition to those provided for in such paragraph. Provided, however, that the tax hereby authorized shall not be imposed after November thirtieth, two thousand twenty-nine.

(b) (1) All provisions set forth in article twenty-eight of this chapter applicable to the taxes imposed under section eleven hundred five, including the definition and exemption provisions of such article, shall apply in respect to a tax imposed under the authority of subdivision (a) of this section, except as to rate and except as otherwise provided herein. A sale of tangible personal property to a person for use by him in performing a service subject to the tax imposed under the authority of paragraph two or three of subdivision (a) of this section shall not be deemed a purchase for resale for purposes of the taxes imposed by article twenty-eight or pursuant to the authority of this article.

(2) However, with respect to a tax imposed under the authority of paragraph three of subdivision (a) of this section a refund or credit equal to the amount of the sale or compensating use tax imposed by

section eleven hundred seven of this chapter and paid on the sale or use of tangible personal property which is later used by such purchaser in performing a service subject to tax under such paragraph shall be allowed such purchaser against the tax imposed pursuant to such paragraph and collected by such person on the sale of such service if such property has become a physical component part of the property upon which the service is performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

(3) Any tax imposed under the authority of subdivision (a) of this section shall be paid with respect to receipts from all sales of services on or after the effective date of such tax although rendered or agreed to be rendered under a prior contract. Where a service is sold on a monthly, quarterly, yearly or other term basis, the charge for such service shall be subject to the tax imposed pursuant to the authority of such subdivision to the extent that such charge is applicable to any period on or after the date such tax becomes effective, and such charge shall be apportioned on the basis of the ratio of the number of days falling within such period to the total number of days in the full term or period.

(4) Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in subdivision (a) of this section are not receipts subject to the taxes imposed under such subdivision.

(5) All taxes imposed pursuant to subdivision (a) of this section shall be administered and collected by the commissioner, as provided in subpart B of part III, and shall be distributed by the commissioner as provided in part IV of this article.

(c) A tax so imposed pursuant to subdivision (a) shall be in addition to any other tax which a city may impose or may be imposing pursuant to this article or any other law, and may be so imposed notwithstanding any inconsistent provisions of this article or of any other law and notwithstanding that the city may impose or may be imposing the taxes authorized by section twelve hundred ten at the maximum rate authorized therefor.

(d) A local law imposing a tax pursuant to this section, increasing or decreasing the rate of such tax, or repealing or suspending such tax

must go into effect only on one of the following dates: March first, June first, September first or December first. No such local law shall be effective unless a certified copy of such local law is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution.

(e) Certified copies of any local law described in subdivision (d) of this section shall also be filed with the city clerk, the secretary of state and the state comptroller within five days after the date it is enacted. Certified copies of any other local law enacted pursuant to this section shall be filed with the commissioner, the city clerk, the secretary of state and the state comptroller within five days after the date it is enacted.

§ 1213. Deliveries outside the jurisdiction where sale is made. Where a sale of tangible personal property or services, including prepaid telephone calling services, but not including other services described in subdivision (b) of section eleven hundred five of this chapter, including an agreement therefor, is made in any city, county or school district, but the property sold, the property upon which the services were performed or prepaid telephone calling or other service is or will be delivered to the purchaser elsewhere, such sale shall not be subject to tax by such city, county or school district. However, if delivery occurs or will occur in a city, county or school district imposing a tax on the sale or use of such property, prepaid telephone calling or other services, the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four of this article, the aggregate sales or compensating use taxes imposed by the city, if any, county and school district in which delivery occurs or will occur, for distribution by the commissioner to such taxing jurisdiction or

jurisdictions. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property or of the service, including prepaid telephone calling service, by the purchaser. Notwithstanding the foregoing, where a transportation service described in paragraph ten of subdivision (c) of section eleven hundred five of this chapter begins in one jurisdiction but ends in another jurisdiction, any tax imposed pursuant to the authority of this article shall be due the jurisdiction or jurisdictions where the service commenced.

§ 1214. Certain sales of motor vehicles and vessels: proof required for registration of motor vehicles and vessels. (a) (1) Except as provided in paragraph three of this subdivision, where a sale of a motor vehicle or vessel, including an agreement therefor, is made in any city, county or school district to a nonresident thereof, such sale shall not be subject to tax by such city, county or school district, despite the fact that such motor vehicle or vessel is delivered to the purchaser within such jurisdiction, provided the purchaser furnishes to the vendor, prior to taking delivery, proof satisfactory to the commissioner that the purchaser:

- (i) is a nonresident of the jurisdiction in which the sale is made,
- (ii) has no permanent place of abode within such jurisdiction,
- (iii) is not engaged in carrying on in such jurisdiction any employment, trade, business or profession in which the motor vehicle or vessel will be used in such jurisdiction, and such other proof as the commissioner may require to ensure proper administration of the taxes imposed under the authority of sections twelve hundred ten and twelve hundred eleven of this article.

(2) However, if such purchaser resides in a city, county or school district imposing a tax on the use of such motor vehicle or vessel, the vendor shall be required to collect from such purchaser, as provided in section twelve hundred fifty-four of this article, the aggregate compensating use taxes imposed by the city, if any, county and school district in which such purchaser resides, for distribution by the commissioner to such taxing jurisdiction or jurisdictions.

(3) Provided, however, the exclusion from tax provided in paragraph

one of this subdivision shall not apply where the receipts from such sale would have been excluded from tax pursuant to section eleven hundred seventeen of this chapter but for failure to satisfy either the condition set forth in paragraph two of subdivision (a) of section eleven hundred seventeen of this chapter or the condition set forth in paragraph three of subdivision (a) of section eleven hundred seventeen of this chapter.

(b) A vendor shall not be liable for failure to collect tax on such sale of a motor vehicle or vessel provided the proof furnished to such vendor by the purchaser pursuant to subdivision (a) of this section shows that the purchaser's residence is not in any city, county or school district which imposes a tax on the use of such motor vehicle or vessel, and provided the vendor keeps such proof available for inspection by the commissioner and further provided that such proof is not known by the vendor, prior to making physical delivery of the motor vehicle or vessel, to be false.

(c) For purposes of subdivisions (a) and (b) of this section, the term:

(1) "Motor vehicle" shall include a motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law and a trailer as defined in section one hundred fifty-six of the vehicle and traffic law.

(2) "Vessel" shall (i) include a vessel as defined in section twenty-two hundred fifty of the vehicle and traffic law, including any inboard or outboard motor and any trailer, as defined in section one hundred fifty-six of the vehicle and traffic law, sold with the vessel for use with such vessel; (ii) but not include a vessel weighing two hundred pounds or less, inclusive of any mast and sail or other rigging, which is not equipped with a motor and which is exempt from registration under paragraph (g) of subdivision one of section twenty-two hundred fifty-two of the vehicle and traffic law.

(d) The commissioner of motor vehicles shall not issue a registration certificate, except in renewal of registration by the same owner, (1) for any passenger motor vehicle not used to carry passengers for hire, any snowmobile, as defined in section twenty-two hundred twenty-one of the vehicle and traffic law, trailer, as defined in section one hundred fifty-six of the vehicle and traffic law, vessel, as defined in section

twenty-two hundred fifty of such law, or all terrain vehicle, as defined in section twenty-two hundred eighty-one of such law, which is owned by an individual whose residence is within any city or county imposing the taxes authorized by subdivision (a) of section twelve hundred ten of this article, or (2) for any motor vehicle, snowmobile, trailer, vessel or all terrain vehicle except as provided in paragraph one of this subdivision, owned by a person whose residence or business address is within any such city or county, except upon proof, in a form approved by the commissioner and the commissioner of motor vehicles that any tax imposed by such city or county with respect to the sale of the motor vehicle, snowmobile, trailer, vessel or all terrain vehicle to the registrant or his use thereof has been paid, or that no such tax is due.

§ 1215. Definitions. (a) As used in this article, the term "county" shall mean any county in this state, except a county wholly within a city.

(b) As used in this article, except where otherwise expressly provided in this article, the term "population" shall mean the number of people in the particular taxing jurisdiction as shown by the latest federal census.

§ 1216. Special transitional provisions for utility services. Notwithstanding sections three and five of chapter ninety-three of the laws of nineteen hundred sixty-five, as amended, the sale, consumption or use of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, for which a bill is rendered based on meters read on or after August first, nineteen hundred sixty-five, where one-half or less of the number of days included in the month or other period billed are days subsequent to July thirty-first, nineteen hundred sixty-five, shall continue to be subject to the applicable tax on such sales, consumption or use as imposed pursuant to the authority of chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four, as amended, or the applicable tax on such sales, consumption or use as imposed pursuant to the authority of sections one, two or three-a of chapter two hundred seventy-eight of the

laws of nineteen hundred forty-seven, as amended. Notwithstanding sections three and five of chapter ninety-three of the laws of nineteen hundred sixty-five, as amended, such taxes shall also apply to sales, consumption or use of telephone or telegraph service shown on all bills dated before August first, nineteen hundred sixty-five covering periods subsequent to July thirty-first, nineteen hundred sixty-five.

§ 1217. General transitional provisions. (a) For the purposes of any local law, ordinance or resolution imposing a local tax pursuant to the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A or increasing the rate of such tax, all references in section eleven hundred six to August first, nineteen hundred sixty-five shall be read as referring to the effective date of such local law, ordinance or resolution, all references in said section to April first, nineteen hundred sixty-five shall be read as referring to a date four months prior to the effective date of such local law, ordinance or resolution and the reference in subdivision (b) of section eleven hundred six to July thirty-first, nineteen hundred sixty-five shall be read as referring to the day immediately before the effective date of such local law, ordinance or resolution.

(b) In applying the provisions of section eleven hundred nineteen with respect to pre-existing lump sum or unit price construction contracts to a tax on retail sales of tangible personal property or a compensating use tax imposed pursuant to the authority of section twelve hundred ten or twelve hundred eleven, all references in said section to the date of the enactment of article twenty-eight or the enactment of a law increasing the rate of tax imposed under said article shall be read as referring to the date of the enactment of the local law, ordinance or resolution imposing such local tax or increasing the rate thereof.

§ 1218. Incorporation of articles twenty-eight and twenty-nine into local enactments. A local law, ordinance or resolution imposing a tax pursuant to subpart B of part I of this article shall, except as otherwise provided in this article, be deemed to have incorporated therein all of the provisions in articles twenty-eight and twenty-nine

of this chapter and any amendment to the provisions in such articles to the extent such provisions and amending acts are otherwise applicable to the taxes imposed under such local law, ordinance or resolution by a city, county or school district.

PART II--LIMITATIONS ON AUTHORITY AND EXEMPTIONS

SUBPART A--GENERAL

§ 1220. Territorial limitations. Any tax imposed under the authority of this article shall apply only within the territorial limits of the city, county or school district imposing the tax, except that where the taxes described in subdivision (b) of section eleven hundred five and clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten or the tax described in subdivision (e) of section eleven hundred five is imposed by a city, as provided in section twelve hundred ten or twelve hundred eleven of this chapter, any establishment located partially within such city and partially within a town or towns and receiving or using any services or utilities provided by the city shall be deemed to be wholly within such city for the purposes of such taxes.

§ 1221. Taxes not authorized. (a) This article shall not be construed as authorizing the imposition of:

(1) a tax on incomes or upon the transfers of estates of deceased persons,

(2) a tax upon gross income from the operation of hotels, multiple dwellings or office buildings by persons in the business of operating or leasing sleeping or parlor railroad cars or of operating railroads other than street surface, rapid transit, subways and elevated railroads,

(3) except in accordance with the provisions of section twenty-b of the general city law, a tax upon gross incomes, gross operating incomes or gross receipts of persons subject to taxation under the provisions of section one hundred eighty-six-a or one hundred eighty-six-e of this

chapter, but this clause shall not be deemed to restrict the power to tax persons not subject to taxation under such section of this chapter who are otherwise subject to taxation under subdivision (a) of section twelve hundred one, nor the power to provide for credits against any tax imposed pursuant to such subdivision, nor to limit the rates of taxes authorized to be imposed by such subdivision (a) of such section twelve hundred one, or

(4) a tax upon interest or dividends received from a corporation by a person referred to in this section.

§ 1222. Taxes to be in addition to others. Except as expressly otherwise provided in this article, any tax imposed under the authority of this article shall be in addition to any and all other taxes authorized or imposed under any other provision of law. This article shall not be construed as limiting the power of any city, county or school district to impose any other tax which it is authorized to impose under any other provision of law.

§ 1223. Limitations on rates. (a) No transaction taxable under sections twelve hundred two through twelve hundred four of this article shall be taxed pursuant to this article by any county or by any city located therein, or by both, at an aggregate rate in excess of the highest rate set forth in the applicable subdivision of section twelve hundred one of this article or, in the case of any taxes imposed pursuant to the authority of section twelve hundred ten or twelve hundred eleven of this article (other than taxes imposed by the county of Nassau, Erie, Steuben, Cattaraugus, Suffolk, Oneida, Genesee, Greene, Franklin, Hamilton, Herkimer, Tioga, Orleans, Allegany, Ulster, Albany, Rensselaer, Tompkins, Wyoming, Columbia, Schuyler, Rockland, Chenango, Monroe, Chemung, Seneca, Sullivan, Wayne, Livingston, Schenectady, Montgomery, Delaware, Clinton, Niagara, Yates, Lewis, Essex, Dutchess, Schoharie, Putnam, Chautauqua, Orange, Oswego, Ontario, Jefferson, St. Lawrence, Westchester or Onondaga and by the county of Cortland and the city of Cortland and by the county of Broome and the city of Binghamton and by the county of Cayuga and the city of Auburn and by the county of

Otsego and the city of Oneonta and by the county of Madison and the city of Oneida and by the county of Fulton and the city of Gloversville or the city of Johnstown as provided in section twelve hundred ten of this article) at a rate in excess of three percent, except that, in the city of Yonkers, in the city of Mount Vernon, in the city of New Rochelle, in the city of Fulton, in the city of Oswego, and in the city of White Plains, the rate may not be in excess of four percent, and except that in the city of Poughkeepsie in the county of Dutchess, if such county withdraws from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of the public authorities law and if the revenues from a three-eighths percent rate of such tax imposed by such county, pursuant to the authority of section twelve hundred ten of this article, are required by local laws, ordinances or resolutions to be set aside for mass transportation purposes, the rate may not be in excess of three and three-eighths percent.

(b) If a transaction is taxed by both a county and a city, the rate of tax on such transaction imposed by the county or city, not having prior right thereto pursuant to section twelve hundred twenty-four, shall be deemed to be reduced (or the entire tax eliminated, if necessary) to the extent necessary to comply with the foregoing requirement. A tax imposed by a county upon any transaction, to the extent that it would require a reduction in any tax rate imposed thereon by a city, shall not become effective in respect to any transaction taxed by such city (or in respect of other similar transactions outside of the city which, if occurring in such city, would be subject to such city tax) before the commencement of the city's next succeeding fiscal year and then only if the county shall have given notice to such city of its imposition of a tax on such transaction at least six months prior to the commencement of such fiscal year, provided however that the local legislative body of such city may waive the requirement of such notice and the postponement of the effective date of such tax. A city tax upon any transaction, to the extent that it would require a reduction in any tax rate imposed by a county thereon, shall not become effective in respect of any transaction taxed by such county before the commencement of the county's next succeeding fiscal year and then only if the city shall have given notice to such county of its imposition of a tax on such transaction at

least six months prior to the commencement of such fiscal year, provided, however, that the local legislative body of such county may waive the requirement of such notice and postponement of the effective date of such tax. However, whether or not the six months' notice requirement provided in this section has been waived, a tax imposed pursuant to the authority of section twelve hundred ten or twelve hundred eleven shall still be subject to the requirements provided for in the first three sentences of subdivision (d) of such sections and in subdivision (e) of such sections.

§ 1224. Prior rights assigned counties and cities. (a) Where a county contains one or more cities of less than one million, such county shall have prior right to impose:

(1) any or all of the taxes described in subdivisions (c), (d) and (e) of section twelve hundred one, as authorized by section twelve hundred two.

(2) all of the taxes described in article twenty-eight as authorized by subdivision (a) of section twelve hundred ten, to the extent of one-half the maximum rates authorized under such subdivision, except as otherwise provided in this section.

(b) Each city in such a county shall have prior right to impose:

(1) any or all of the taxes described in subdivisions (b), (d), (e) and (f) of section eleven hundred five, and, where the tax described in subdivision (b) of section eleven hundred five is imposed, all of the taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter, as authorized by subdivision (b) of section twelve hundred ten of this article.

(2) all of the taxes described in article twenty-eight as authorized by subdivision (a) of section twelve hundred ten, or by section twelve hundred eleven, to the extent of one-half the maximum aggregate rates authorized under such subdivision (a) and such section twelve hundred eleven, except as otherwise provided in this section.

(c) However, where a county containing a city with a population of one hundred twenty-five thousand or more imposes all of the taxes described in article twenty-eight as authorized by subdivision (a) of section twelve hundred ten (1) for county purposes and (2) for educational

purposes or for allocation and distribution to cities and the area outside cities, in accordance with section twelve hundred sixty-two, the county shall have the prior right to impose such taxes for county purposes at not to exceed one-third of the maximum rate authorized under subdivision (a) of section twelve hundred ten and prior right to impose such taxes for educational purposes or for such allocation and distribution, or both, at not to exceed one-third of such maximum rate. In such event, a city in the county shall have prior right to impose such taxes at not to exceed one-third of such maximum rate.

(c-1) Notwithstanding any other provision of law: (1) Where a county containing one or more cities with a population of less than one million has elected the exemption for residential solar energy systems equipment and electricity provided in subdivision (ee) of section eleven hundred fifteen of this chapter, the exemption for commercial solar energy systems equipment and electricity provided in subdivision (ii) of such section eleven hundred fifteen, or both such exemptions, a city within such county shall have the prior right to impose tax on such exempt equipment and/or electricity to the extent of one half of the maximum rates authorized under subdivision (a) of section twelve hundred ten of this article;

(2) Where a city of less than one million has elected the exemption for residential solar energy systems equipment and electricity provided in subdivision (ee) of section eleven hundred fifteen of this chapter, the exemption for commercial solar energy systems equipment and electricity provided in subdivision (ii) of such section eleven hundred fifteen, or both such exemptions, the county in which such city is located shall have the prior right to impose tax on such exempt equipment and/or electricity to the extent of one half of the maximum rates authorized under subdivision (a) of section twelve hundred ten of this article.

(c-2) Notwithstanding any other provision of law: (1) Where a county containing one or more cities with a population of less than one million has elected the exemption for commercial fuel cell electricity generating systems equipment and electricity generated by such equipment provided in subdivision (kk) of such section eleven hundred fifteen, a city within such county shall have the prior right to impose tax on such exempt equipment and/or electricity to the extent of one half of the

maximum rates authorized under subdivision (a) of section twelve hundred ten of this article;

(2) Where a city of less than one million has elected the exemption for commercial fuel cell electricity generating systems equipment and electricity generated by such equipment provided in subdivision (kk) of such section eleven hundred fifteen, the county in which such city is located shall have the prior right to impose tax on such exempt equipment and/or electricity to the extent of one half of the maximum rates authorized under subdivision (a) of section twelve hundred ten of this article.

* (d) The city of Yonkers shall have the sole right to impose the additional one percent and one-half of one percent rate of tax which such city is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rates of tax shall be in addition to any other tax which such city may impose or may be imposing pursuant to this article or any other law and such additional rates of tax shall not be subject to pre-emption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent and one-half of one percent rate of tax which the city of Yonkers is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB Effective until November 30, 2027

* (d) The city of Yonkers shall have the sole right to impose the additional one percent rate of tax which such city is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such city may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to pre-emption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the city of Yonkers is authorized and empowered to adopt pursuant to section twelve hundred ten.

* NB Effective November 30, 2027

(e) The county of Erie shall have the sole right to impose the additional one percent rate and the additional three-quarters of one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article, such

additional rates of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rates of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate and the additional three-quarters of one percent rate of tax which the county of Erie is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

(f) The city of Mount Vernon shall have the sole right to impose the additional one percent rate of tax which such city is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such city may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to pre-emption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the city of Mount Vernon is authorized and empowered to adopt pursuant to section twelve hundred ten.

(g) The county of Cattaraugus shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Cattaraugus is authorized and empowered to adopt pursuant to section twelve hundred ten.

(h) In the city of Poughkeepsie in the county of Dutchess, if the aggregate rate of such tax imposed in such city by such county and such city is three and three-eighths percent, the three-eighths percent rate of such tax imposed by such county in such city which has been set aside for mass transportation purposes shall not be subject to preemption.

(i) The city of Rome shall have the sole right to impose the additional one-quarter of one percent rate of tax which such city is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to

any other tax which such city may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to pre-emption. The maximum three percent referred to in this section shall be calculated without reference to the additional one-quarter of one percent rate of tax which the city of Rome is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* (j) The county of Albany shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Albany is authorized and empowered to adopt pursuant to section twelve hundred ten.

* NB There are 4 sub (j)'s

* (j) The county of Tompkins shall have the sole right to impose the additional one-half or one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one-half or one percent rate of tax which the county of Tompkins is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 4 sub (j)'s

* (j) The county of Monroe shall have the sole right to impose each additional one-half of one percent rate of tax and the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of clauses (i), (ii) and (iii) of the opening paragraph of section twelve hundred ten that relate to the county of Monroe and each such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article

or any other law and each such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to each additional one-half of one percent rate of tax and the additional one percent rate of tax which the county of Monroe is authorized and empowered to adopt pursuant to clauses (i), (ii) and (iii) of the opening paragraph of section twelve hundred ten that relate to the county of Monroe.

* NB There are 4 sub (j)'s

* (j) The county of Oneida shall have the sole right to impose the additional one percent and either the additional three-quarters of one percent or one-half of one percent rates of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rates of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rates of tax shall not be subject to preemption. The net collections from the additional three-quarters of one percent or one-half of one percent rate authorized pursuant to subclause (ii) of clause thirteen of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article shall not be subject to any revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this article. The maximum three percent rate referred to in this section shall be calculated without reference to any of the additional rates of tax which the county of Oneida is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 4 sub (j)'s

(k) For purposes of this section, the term "prior right" shall mean the preferential right to impose any tax described in sections twelve hundred two and twelve hundred three, twelve hundred ten and twelve hundred eleven and thereby to pre-empt such tax and to preclude another municipal corporation from imposing or continuing the imposition of such tax to the extent that such right is exercised. However, the right of pre-emption shall only apply within the territorial limits of the taxing jurisdiction having the right of pre-emption.

(l) The county of Steuben shall have the sole right to impose the additional one percent rate of tax which such county is authorized to

impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Steuben is authorized and empowered to adopt pursuant to section twelve hundred ten.

(m) The city of White Plains shall have the sole right to impose the additional one-half of one percent and the additional one-quarter of one percent and the additional one-quarter of one percent rates of tax which such city is authorized to impose pursuant to the authority of section twelve hundred ten of this chapter. Such additional rates of tax shall be in addition to any other tax which such city may impose or may be imposing pursuant to this article or any other law and such additional rates of tax shall not be subject to pre-emption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one-half of one percent and the additional one-quarter of one percent and the additional one-quarter of one percent rates of tax which the city of White Plains is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* (n) The city of New Rochelle shall have the sole right to impose the additional one percent rate of tax which such city is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such city may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to pre-emption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the city of New Rochelle is authorized and empowered to adopt pursuant to section twelve hundred ten.

* NB There are 2 sub (n)'s

* (n) The county of Tioga shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this

article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Tioga is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (n)'s

(o) The county of Ulster shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Ulster is authorized and empowered to adopt pursuant to section twelve hundred ten.

* (p) The county of Herkimer shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption, pursuant to an agreement entered into between the county of Herkimer and the city of Little Falls on April twelfth, nineteen hundred ninety-four, and filed with the clerk of the county legislature of the county of Herkimer. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Herkimer is authorized and empowered to adopt pursuant to section twelve hundred ten.

* NB There are 2 sub (p)'s

* (p) The county of Genesee shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to

preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Genesee is authorized and empowered to adopt pursuant to section twelve hundred ten.

* NB There are 2 sub (p)'s

(q) The county of Rensselaer shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Rensselaer is authorized and empowered to adopt pursuant to section twelve hundred ten.

(r) The county of Columbia shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Columbia is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

(s) (1) Notwithstanding any other provision of this section, each city in the county of Oswego shall have prior right to impose:

(A) all of the taxes described in article twenty-eight of this chapter as authorized by subdivision (a) of section twelve hundred ten or by section twelve hundred eleven of this article, up to the maximum rate authorized by the opening paragraph of such section twelve hundred ten.

(B) any or all of the taxes described in subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, and, where the tax described in such subdivision (b) of section eleven hundred five is imposed, all of the taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter, as

authorized by subdivision (b) of section twelve hundred ten of this article.

(2) Notwithstanding any provision of this article, during any period that the county of Oswego is authorized to impose an additional rate of tax by section twelve hundred ten of this article, such county shall have the sole right to impose such additional rate, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law, and such additional rate of tax shall not be subject to pre-emption and shall apply only in the area of the county outside the cities in such county, provided that such additional rate of the county shall apply in a city in such county to the extent the city does not impose tax pursuant to the authority of section twelve hundred ten of this article at a rate greater than three percent.

(t) The county of Schuyler shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Schuyler is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* (u) The county of Chenango shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Chenango is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 3 sub (u)'s

* (u) The county of Chemung shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Chemung is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 3 sub (u)'s

* (u) The county of Seneca shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Seneca is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 3 sub (u)'s

* (v) The county of Niagara shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Niagara is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (v)'s

* (v) The county of Dutchess shall have the sole right to impose the

additional three-quarters of one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional three-quarters of one percent rate of tax which the county of Dutchess is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (v)'s

* (w) The county of Montgomery shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Montgomery is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (w)'s

* (w) The county of Yates shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Yates is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (w)'s

(x) The county of Schenectady shall have the sole right to impose the additional one-half of one percent rate of tax which such county is

authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one-half of one percent rate of tax which the county of Schenectady is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

(y) The county of Livingston shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Livingston is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

(z) The county of Sullivan shall have the sole right to impose both additional one-half of one percent rates of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rates of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rates of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one-half of one percent rates of tax which the county of Sullivan is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

(z-1) The county of Lewis shall have the sole right to impose the additional three-quarters of one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional

rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional three-quarters of one percent rate of tax which the county of Lewis is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* (aa) The county of Broome shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten, such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Broome is authorized and empowered to adopt pursuant to section twelve hundred ten.

* NB There are 2 sub (aa)'s

* (aa) The county of Delaware shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Delaware is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (aa)'s

* (bb) The county of Schoharie shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Schoharie is authorized and

empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (bb)'s

* (bb) The county of Orange shall have the sole right to impose the additional three-quarters of one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional three-quarters of one percent rate of tax which the county of Orange is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (bb)'s

* (cc) The county of Clinton shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Clinton is authorized and empowered to adopt pursuant to section twelve hundred ten of this article. Net collections from any additional rate of sales and compensating use taxes which the county may impose during the period commencing December first, two thousand eleven, and ending November thirtieth, two thousand twenty-three, pursuant to the authority of section twelve hundred ten of this article shall be used by the county solely for county purposes and shall not be subject to any revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this article.

* NB There are 2 sub (cc)'s

* (cc) The county of Essex shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this

article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Essex is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (cc)'s

* (dd) The county of Jefferson shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Jefferson is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (dd)'s

* (dd) The county of Onondaga shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Onondaga is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (dd)'s

(ee) The county of Chautauqua shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other

tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Chautauqua is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

(ff) The county of Putnam shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Putnam is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* (gg) The county of Franklin shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Franklin is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (gg)'s

* (gg) The county of Ontario shall have the sole right to impose the additional one-eighth of one percent and the additional three-eighths of one percent rates of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rates of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rates of tax shall not be subject to

preemption. Net collections from the additional three-eighths of one percent rate imposed pursuant to the authority of subclause (B) of clause forty of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article shall be set aside for county purposes and shall not be subject to any revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two or section twelve hundred sixty-two-r of this article, as added by chapter thirty-seven of the laws of two thousand six. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one-eighth of one percent or three-eighths of one percent rate of tax which the county of Ontario is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sub (gg)'s

(hh) Notwithstanding the foregoing provisions of this section or other law to the contrary:

(1) If a county, other than a county to which subdivision (c) of this section applies and other than Oswego county, and a city in the county each impose sales and compensating use taxes pursuant to the authority of subpart B of part one of this article, and

(A) neither elects to tax motor fuel and diesel motor fuel as described in subdivision (m) of section eleven hundred eleven of this chapter, the provisions of paragraph two of subdivisions (a) and (b) of this section shall apply to their rates of tax on motor fuel and diesel motor fuel in such city; or

(B) both elect to tax motor fuel and diesel motor fuel as described in subdivision (m) of section eleven hundred eleven of this chapter, each shall have the prior right to the taxes on such fuels as described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of one-half the maximum rate authorized for such county or city, without regard to whether they have chosen the two dollar or three dollar base on which such taxes may be imposed; or

(C) only one of them elects to tax motor fuel and diesel motor fuel as described in subdivision (m) of section eleven hundred eleven of this chapter, the one that did not make such election shall have the prior right to impose taxes on such fuels described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of one-half

the maximum rate, and the one that did make such election shall have the prior right to impose taxes on such fuels described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of one-half the maximum rate authorized for such locality but with regard to whether it chose the two dollar or three dollar base on which such taxes may be imposed.

(2) If a county to which subdivision (c) of this section applies and a city in such county each impose sales and compensating use taxes pursuant to the authority of subpart B of part one of this article, and

(A) neither elects to tax motor fuel and diesel motor fuel as described in subdivision (m) of section eleven hundred eleven of this chapter, the provisions of subdivision (c) of this section shall apply to their rates of tax on motor fuel and diesel motor fuel in such city; or

(B) both elect to tax motor fuel and diesel motor fuel as described in subdivision (m) of section eleven hundred eleven of this chapter, the county shall have the prior right to impose taxes on such fuels as described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of two-thirds, and the city shall have the prior right to impose taxes on such fuels as described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of one-third, of the maximum rate authorized for such county and city, without regard to whether they have chosen the two dollar or three dollar base on which such taxes may be imposed; or

(C) only one of them elects to tax motor fuel and diesel motor fuel as described in subdivision (m) of section eleven hundred eleven of this chapter, if the county did not make such election, it shall have the prior right to impose taxes on such fuels described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of two-thirds the maximum rate authorized, and the city shall have the prior right to impose taxes on such fuels described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of one-third the maximum rate authorized for such city but with regard to whether it chose the two dollar or three dollar base on which such tax may be imposed; and, if the city did not make the election, it shall have the prior right to impose taxes on such fuels described in subdivision (m) of section eleven hundred eleven of this chapter, to the

extent of one-third the maximum rate authorized, and the county shall have the prior right to impose taxes on such fuels described in subdivision (m) of section eleven hundred eleven of this chapter, to the extent of two-thirds the maximum rate authorized for such county but with regard to whether it chose the two dollar or three dollar base on which such taxes may be imposed.

(3) In Oswego county, references in subparagraph (A) of paragraph one of subdivision (s) of this section to tax imposed by a city in such county at the maximum rate authorized or in subparagraph (B) of subdivision (s) of this section to the taxes described in subdivision (b) of section eleven hundred five of this chapter shall include tax imposed by the city pursuant to any election it makes under subdivision (m) of section eleven hundred eleven of this chapter, regardless of whether such city chooses the two dollar or three dollar base on which such tax may be imposed.

(4) Nothing in this subdivision or in subdivision (m) of section eleven hundred eleven of this chapter shall be construed to affect the authority of a county or city to impose an additional rate of tax pursuant to this article, provided that, if a county or city makes the election described in subdivision (m) of section eleven hundred eleven of this chapter, such election shall apply uniformly to any tax it imposes pursuant to the authority of subpart B of part one of this article, including any additional rate of tax it is authorized to impose.

(5) For purposes of this section, the terms "maximum rate authorized" and "maximum rate" shall each have the same meaning as in subdivisions (a), (b) and (c) of this section.

* (ii) The county of St. Lawrence shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of St. Lawrence is authorized and empowered to adopt pursuant to section twelve hundred ten of this

article.

* NB There are 2 sb (ii)'s

* (ii) The county of Hamilton shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Hamilton is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

* NB There are 2 sb (ii)'s

(jj) The county of Westchester shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article in the area of the county outside the cities of Mount Vernon, New Rochelle, White Plains and Yonkers. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Westchester is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

SUBPART B--TAXES ADMINISTERED BY CITIES, COUNTIES AND SCHOOL DISTRICTS

§ 1230. Exempt organizations. Any tax imposed under the authority of sections twelve hundred one through twelve hundred five shall not be imposed on any transaction by or with the following:

(a) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to

agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer;

(b) The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation where it is the purchaser, user or consumer;

(c) The United Nations or other international organizations of which the United States of America is a member; and

(d) Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that this subdivision shall not apply to an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision. Nothing in this subdivision shall prohibit any organization exempt from taxation pursuant to this section from collecting the taxes imposed under the authority of section twelve hundred two-f from individuals who are doing business with such exempt organization and who are not exempt from taxation pursuant to this section.

§ 1231. Certain restrictions against double taxation. Except as expressly otherwise provided in this article, nothing in this article shall limit or prevent the imposition of a tax on gross income or a tax on gross receipts of persons, firms and corporations doing business in any city with a population of one million or more. No such person, firm or corporation, however, shall be subject to the imposition under the provisions of this article of more than one tax by any such city on gross income or gross receipts for the privilege of doing business.

SUBPART C--TAXES ADMINISTERED BY STATE TAX COMMISSION

§ 1235. Taxes paid to other jurisdictions. (a) With respect to taxes imposed pursuant to subdivision (a) of section twelve hundred ten and pursuant to section twelve hundred eleven, the use of tangible personal property purchased at retail and of any of the services subject to the sales tax shall be exempt from the compensating use tax authorized under subdivision (a) of such section twelve hundred ten and under section twelve hundred eleven, to the extent that a retail sales tax or a compensating use tax was legally due and paid thereon, without any right to a refund or credit thereof, to (1) any municipal corporation in this state or (2) any other state or jurisdiction within any other state, but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property or of any of the services upon which such a sale or compensating use tax was paid to this state and any of its municipal corporations, except as provided in subdivision (b) of this section.

(b) To the extent that a compensating use tax imposed pursuant to this article and the compensating use tax imposed by article twenty-eight are at a higher aggregate rate than the rate of tax imposed in any other state or jurisdiction within any other state, the exemption provided in subdivision (a) of this section shall be inapplicable and the taxes imposed pursuant to this article and by article twenty-eight shall apply to the extent of the difference between such aggregate rate and the rate paid in such other state or jurisdiction. In such event, the amount payable shall be allocated between the tax imposed pursuant to this article and the tax imposed by article twenty-eight in proportion to the respective rates of such taxes. Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to a compensating use tax imposed by any other municipal corporation in this state and such tax is at a higher rate than the rate of tax imposed by the first municipal corporation, the tax of the municipal corporation with the higher rate shall also apply but only to the extent of the difference in such rates and such tax shall be distributable to such municipal

corporation, pursuant to section twelve hundred sixty-one, without allocation as hereinabove provided. Where a retail sales tax or a compensating use tax was legally due and paid to this state only, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to a compensating use tax imposed by a municipal corporation in this state, such tax shall be distributable to the municipal corporation, pursuant to section twelve hundred sixty-one, without allocation as hereinabove provided.

(c) For purposes of this section, a payment to the tax commission of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

PART III--ADMINISTRATIVE PROVISIONS

SUBPART A--TAXES ADMINISTERED BY CITIES, COUNTIES AND SCHOOL DISTRICTS

§ 1240. Administration and collection. The taxes authorized under sections twelve hundred one through twelve hundred four of this article which are now imposed shall continue to be administered and collected by the fiscal or other officers of the city, county or school district in the same manner as such taxes have been administered and collected by such officers immediately prior to the enactment of this article, in accordance with the applicable provisions of the charter, administrative code, local law, ordinance or resolution then in force, with such amendments in respect to administration and collection as may be enacted. Taxes authorized under sections twelve hundred one through twelve hundred four of this article which may hereafter be imposed by a city, county or school district shall be administered and collected in such manner as may be provided in its charter, administrative code, local laws, ordinances or resolutions, with such amendments in respect to administration and collection as may be enacted. Notwithstanding any other provision of law to the contrary, the authorization to impose tax

upon the transfer of real property pursuant to subdivision (b) of section twelve hundred one of this article, shall not, when the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, include the authorization to impose civil or criminal penalties, interest, or other liability upon the referee or sheriff effectuating the transfer.

§ 1241. Joint administration and collection of taxes by counties and cities. (a) The board of supervisors or other elective governing body of any county and the local legislative body of any city may provide by agreement with one or more counties or cities for the imposition by each such county and city of one or more taxes which may be imposed pursuant to the authority of sections twelve hundred two and twelve hundred three by such county or city, as the case may be, and for the joint or cooperative administration and collection of any such tax or taxes, including common use of a single agency therefor. Such agreement may make provision, consistent with law, for the custody and distribution of the proceeds of any such tax; the appointment and removal, powers, duties, and compensation of officers and employees; the availability of necessary funds and the audit and payment of expenses of administration; and such other matters as are necessary and proper to effectuate the purposes of such agreement.

(b) By agreement for a period of not to exceed one year, the board of supervisors or other elective governing body of a county and the local legislative body of a city in such county may, from year to year, provide that the city shall have the sole right to impose in such city one or more of the taxes described in sections twelve hundred two and twelve hundred three and that the county shall have the right to impose such tax or taxes only in the area of the county outside such city. In such event the net collections received by the county from such a tax shall be allocated, applied and distributed to such area in the manner provided by subdivision (d) of section twelve hundred sixty-two.

(c) Where a city imposes a tax described in subdivision (e) of section twelve hundred one, as provided in section twelve hundred three, the governing body of the city may provide by agreement with the governing

body of the county in which such city is contained for the collection of such tax by the clerk of such county. Such agreement may make provision, notwithstanding the provisions of any general, special or local law, for the safekeeping of moneys so collected; the bonding at the expense of the city of officers and employees collecting or safekeeping such moneys; compensation to the county for such services at a rate not in excess of twenty-five cents for each vehicle the use of which is so taxed; periodic payment to the city of money so collected, less such compensation; reporting to the city of registrations of motor vehicles issued by such clerk pursuant to section two hundred five of the vehicle and traffic law; and such other matters as are necessary and proper to effectuate the purposes of such agreement.

§ 1242. Limitations on assessment. (a) Cities over one million. Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to the taxes imposed under the authority of section twelve hundred one, after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed, or where the taxpayer fails to file a report in respect of a change or correction in the amount of sales and compensating use tax liability relating to the purchase or use of items for which a sales or compensating use tax credit against the tax was claimed, as provided by law, the tax may be assessed at any time. Notwithstanding the prior sentence, no assessment of additional tax shall be made with respect to taxes imposed under local laws enacted prior to July first, nineteen hundred thirty-eight, except in the case of a wilfully false or fraudulent return with intent to evade the tax. Where the taxpayer files a report in respect of a change or correction in sales and compensating use tax liability, as provided by law, an assessment may be made at any time within two years after such report was filed.

(b) Cities under one million, counties and school districts. Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to taxes imposed under the authority of sections twelve hundred two through twelve hundred four, after the expiration of more than three years from

the date of the filing of a return, provided, however, that where no return has been filed as provided by local law, ordinance or resolution, the tax may be assessed at any time.

§ 1243. Judicial review. (a) Any final determination of the amount of any tax payable under sections twelve hundred one through twelve hundred four shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless (1) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, ordinance, resolution or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding or (2) at the option of the taxpayer, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against such taxpayer in the prosecution of the proceeding, in which event the taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(b) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers or, in the case of a city of one million or more which has established a tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law

and rules, provided, however, (1) that such proceeding is instituted within four months after the giving of the notice of such denial, (2) that a final determination of tax due was not previously made, and (3) that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

SUBPART B--TAXES ADMINISTERED BY TAX COMMISSION

§ 1250. Administration and collection. The taxes imposed under the authority of sections twelve hundred ten, twelve hundred eleven, twelve hundred twelve and twelve hundred twelve-A shall be administered and collected by the state tax commission in the same manner as the taxes imposed under article twenty-eight of this chapter are administered and collected by such commission. All of the provisions of such article relating to or applicable to the administration and collection of the taxes imposed by that article shall apply to the taxes imposed under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A, including sections eleven hundred one and eleven hundred eleven and sections eleven hundred thirty-one through eleven hundred forty-seven, with the same force and effect as if those provisions had been incorporated in full into this article and had expressly referred to the taxes imposed under sections twelve hundred ten through twelve hundred twelve-A, except to the extent that any provisions of such article twenty-eight are either inconsistent with a provision of this article or are not relevant to this article. For purposes of this article, the term "tax" in part IV of such article twenty-eight shall include any tax imposed under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A. Wherever there is joint collection of state and local taxes, it shall be deemed that such collections shall represent proportionally the applicable state and local taxes in determining the amount to be remitted to local taxing jurisdictions.

§ 1251. Returns. (a) Every person required to collect any of the taxes imposed under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A shall file a return as required by subdivision (a) of section eleven hundred thirty-six with the tax commission, except that return for the quarterly period ending August thirty-first, nineteen hundred sixty-five shall only cover the month of August, nineteen hundred sixty-five. The return of a vendor of tangible personal property or services shall show his receipts from sales and also the aggregate value of tangible personal property and services sold by him, the use of which is subject to a tax imposed under the authority of this article and the amount of taxes required to be collected with respect to such sales and use. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon. Every person required to file a part-quarterly return pursuant to subdivision (a) of section eleven hundred thirty-six shall file a return for the same periods for the taxes imposed pursuant to this article. Provided, however, where a part-quarterly return described in paragraph (i) or (ii) of subdivision (a) of section eleven hundred thirty-six is filed for purposes of complying with this section and section eleven hundred thirty-six or subdivision (a) or (b) of section eleven hundred thirty-seven-A, on such returns separate amounts due for the taxes imposed by each county, city or school district, pursuant to the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A, need not be shown. Rather, such returns shall only show the aggregate amount of all such local taxes calculated in the manner provided for in paragraph (i) or (ii) of subdivision (a) of section eleven hundred thirty-six except that in the case of a short-form, part-quarterly return, where a county, city or school district did not impose a tax in the comparable quarter of the immediately preceding year, the tax for that locality shall be calculated on such basis as the tax commission shall by regulation prescribe.

(b) The returns required by this section to be filed quarterly shall

be filed for quarterly periods ending on the last day of February, May, August and November of each year, and each return shall be filed within twenty days after the end of the quarterly period covered thereby. The returns required by this section to be filed monthly shall be filed for monthly periods ending on the last day of each month and each return shall be filed within twenty days after the end of each prior month.

(c) The tax commission may permit or require returns to be made covering other periods and upon such dates as it may specify. If the tax commission deems it necessary in order to insure the payment of the taxes imposed by this article, it may require returns to be made for shorter periods than those prescribed pursuant to the foregoing subdivisions of this section, and upon such dates as it may specify.

(d) The form of returns shall be prescribed by the tax commission and shall contain such information as it may deem necessary for the proper administration of this article. The commission may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

(e) Return and payment to New York city for months of June and July, nineteen hundred sixty-five. With respect to the taxes imposed under titles G, M, N and V of the administrative code of the city of New York, returns shall be filed for the months of June and July, nineteen hundred sixty-five containing such information and accompanied by such payments as are required under titles G, M, N and V of the administrative code of the city of New York and the regulations promulgated thereunder, in effect as of July thirty-first, nineteen hundred sixty-five, except that such returns shall only cover the months of June and July, nineteen hundred sixty-five and not the whole quarter ending August thirty-first, nineteen hundred sixty-five. Such returns, accompanied by the appropriate payments, shall be filed with the commissioner of finance of the city of New York on or before September twentieth, nineteen hundred sixty-five, subject to local law provisions requiring or permitting returns and payments of taxes for shorter periods, and subject to the right of such city to fix by local law another date for such returns and payments.

(f) Returns and payments to cities under one million, counties and school districts for months of June and July, nineteen hundred sixty-five. (1) Localities with a quarter ending August, nineteen

hundred sixty-five. With respect to the taxes imposed under the authority of paragraphs (a), (b), (c), (e) and (i) of section one of chapter two hundred seventy-eight of the laws of nineteen hundred forty-seven, as amended, in effect as of July thirty-first, nineteen hundred sixty-five and any of the same taxes imposed under the authority of sections two, three and three-a of such act, for which returns are due for the quarter ending August thirty-first, nineteen hundred sixty-five, returns shall be filed for the months of June and July, nineteen hundred sixty-five containing such information and accompanied by such payments as are required by the applicable local laws, ordinances, resolutions and the regulations promulgated thereunder, in effect as of July thirty-first, nineteen hundred sixty-five, except that such returns shall only cover the months of June and July, nineteen hundred sixty-five and not the whole quarter ending August thirty-first, nineteen hundred sixty-five. Such returns with the appropriate payments shall be filed with such officers or bodies as are required under such local laws, ordinances, resolutions and regulations on or before September twentieth, nineteen hundred sixty-five, subject to local laws, ordinances or resolutions requiring or permitting returns and payments of taxes for shorter periods, and subject to the right of the taxing jurisdiction to fix another date for such returns and payments by local law, ordinance or resolution.

(2) Localities with a quarter ending September, nineteen hundred sixty-five. With respect to the taxes imposed under the authority of paragraphs (a), (b), (c), (e) and (i) of such section one of chapter two hundred seventy-eight of such laws, as amended, in effect as of July thirty-first, nineteen hundred sixty-five and any of the same taxes imposed under the authority of sections two, three and three-a of such act, for which returns are due for the quarter ending September thirtieth, nineteen hundred sixty-five, returns shall be filed for the month of July, nineteen hundred sixty-five containing such information and accompanied by such payments as are required by the applicable local laws, ordinances, resolutions and regulations promulgated thereunder, in effect as of July thirty-first, nineteen hundred sixty-five, except that such returns shall only cover the month of July, nineteen hundred sixty-five and not the whole quarter ending September thirtieth, nineteen hundred sixty-five. Such returns with the appropriate payments

shall be filed with such officers or bodies as are required under such local laws, ordinances, resolutions and regulations on or before October twentieth, nineteen hundred sixty-five, subject to local laws, ordinances or resolutions requiring or permitting returns and payments of taxes for shorter periods, and subject to the right of the taxing jurisdiction to fix another date for such returns and payments by local law, ordinance or resolution.

§ 1252. Payment of tax. (a) Every person required to file a return or returns under subdivision (a) of the preceding section shall, at the time of filing such return or returns, pay to the state tax commission the amount which section eleven hundred thirty-seven or section eleven hundred thirty-seven-A of article twenty-eight requires to be paid with respect to local taxes imposed pursuant to this article. The amount so required to be paid for the period for which a return or returns is required to be filed shall be due and payable to the state tax commission on the date limited for the filing of the return or returns for such period, without regard to whether a return is filed or whether the return which is filed clearly shows the amount of receipts, amusement charges or returns or the value of property or services sold or purchased or the taxes due thereon. Where the state tax commission, in its discretion, deems it necessary to protect the revenues to be obtained under this article, it shall have the power to require a bond, cash or other security under procedures which are set forth in section eleven hundred thirty-seven.

(b) The tax commission, in its discretion, may require or permit any or all persons liable for any tax or required to collect any tax authorized under section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A to make payment to such banks, banking houses or trust companies designated by the tax commission and to file returns with such banks, banking houses or trust companies, as agent of the state tax commission, in lieu of paying the taxes imposed under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A directly to the state tax commission. However, the tax commission can only designate such banks, banking houses and trust companies which are

already designated by the comptroller as depositories pursuant to section eleven hundred forty-eight of this chapter.

§ 1253. Registration. Every person required to register pursuant to section eleven hundred thirty-four shall be required to register for purposes of the taxes imposed under the authority of sections twelve hundred ten, twelve hundred eleven, twelve hundred twelve and twelve hundred twelve-A. However, only one certificate of authority need be issued. Persons who elect to register under such section eleven hundred thirty-four pursuant to the election provided therein shall also be required to make a similar election for purposes of the taxes imposed under the authority of such sections twelve hundred ten, twelve hundred eleven, twelve hundred twelve and twelve hundred twelve-A, but only one certificate of authority need be issued.

§ 1254. Duty to collect taxes. (a) Every person required to collect tax, as defined in section eleven hundred thirty-one, who is required to collect any state tax imposed under sections eleven hundred five, eleven hundred six or eleven hundred ten, shall at the same time collect any applicable tax imposed by a city, county or school district under the authority of sections twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A, and where the state tax is a retail sales tax, shall also collect any compensating use tax which may be applicable as provided in sections twelve hundred thirteen or twelve hundred fourteen.

(b) Where the state of New York, any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions sells services or property of a kind ordinarily sold by private persons it shall be considered a vendor for purposes of the taxes imposed under the authority of sections twelve hundred ten, twelve hundred eleven, twelve hundred twelve and twelve hundred twelve-A and shall be required to collect the taxes imposed by cities, counties and school districts under the authority of such sections.

SUBPART C - - MISCELLANEOUS

§ 1256. Cooperation by localities. Every city, county and school district shall cooperate with the state tax commission to enable it to carry out its duties under articles twenty-eight and twenty-nine of this chapter. Every such locality shall furnish to such commission those returns, reports and other information which the tax commission deems necessary to carry out such duties, except that cities having a population of one million or more, may, in their discretion, furnish instead copies of such returns, reports and other information. Such copies shall be furnished at the tax commission's expense, such expenses to be charged to the cost of administration. Notwithstanding any other law to the contrary, the duty to furnish returns, reports and other information or copies thereof shall apply to those returns and reports filed under taxes authorized under chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four, as amended, chapter three hundred forty-one of the laws of nineteen hundred forty-six, as amended, article two-B of the general city law and chapter two hundred seventy-eight of the laws of nineteen hundred forty-seven, as amended, and to such other information which is relevant to the duties of the tax commission under such articles twenty-eight and twenty-nine.

§ 1257. Preparation of model local laws, resolutions and regulations by tax commission. The state tax commission shall prepare model local laws, ordinances, resolutions and regulations for the assistance of local officials and shall otherwise advise and cooperate with them for the purpose of effectuating uniform administration, collection and distribution of the taxes authorized under this article.

PART IV - - DISPOSITION OF REVENUES

§ 1260. Revenues resulting from taxes administered by cities over one million. All taxes, penalties and interest resulting from the imposition of the taxes authorized under section twelve hundred one shall be paid into the treasury of the city imposing the tax and shall be credited to and deposited in the general fund of any such city, but no such part of such revenues may be expended unless appropriated in the annual budget of such city.

§ 1261. Revenues resulting from taxes administered by the commissioner. (a) All taxes, penalties and interest imposed by cities, counties or school districts under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A of this article, which are collected by the commissioner, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for the cities, counties or school districts imposing the tax or for (i) the Nassau county interim finance authority or (ii) the Buffalo fiscal stability authority or (iii) the Erie county fiscal stability authority, created by the public authorities law, (i) to the extent that net collections from taxes imposed by Nassau county are payable to the Nassau county interim finance authority or (ii) to the extent that net collections from taxes imposed by Erie county or by the city of Buffalo are payable to the Buffalo fiscal stability authority or (iii) to the extent that net collections from taxes imposed by Erie county are payable to the Erie county fiscal stability authority, or for any public benefit corporation to which the tax may be payable pursuant to law. Such deposits and deposits received pursuant to subdivision (b) of section twelve hundred fifty-two of this article shall be kept in trust and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the commissioner, including the deposits received pursuant to subdivision (b) of section twelve hundred fifty-two of this article. Any amount payable to such authorities pursuant to the public authorities law shall, at the time it is otherwise payable to (i) Nassau county, (ii) Erie county or the city

of Buffalo, or (iii) Erie county, respectively, as specified in this section, be paid instead to such respective authority. Any amount payable to a public benefit corporation pursuant to law shall, at the time it is otherwise payable to the taxing jurisdiction as specified in this section, be paid instead to such public benefit corporation.

(b) The comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds in respect to the taxes imposed by cities, counties and school districts, under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A, and for reasonable costs of the commissioner in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under the provisions of this article.

(c) (1) The comptroller, after reserving such refund fund and such costs shall, on or before the twelfth day of each month pay to the appropriate fiscal officers of the foregoing taxing jurisdictions the taxes, penalties and interest imposed by such jurisdictions under the authority of sections twelve hundred ten through twelve hundred twelve-A of this article, collected by the commissioner pursuant to this article during the next preceding calendar month, provided, however, that the comptroller shall on or before the last day of June and December make a partial payment consisting of the collections made during and including the first twenty-five days of said months to said fiscal officers of the foregoing taxing jurisdictions.

* (2) However, the taxes, penalties and interest from the additional one percent rate which the city of Yonkers is authorized to impose pursuant to item (a) of clause one of subparagraph (ii) of the opening paragraph of section twelve hundred ten of this article, after the comptroller has reserved such refund fund and such cost shall be paid to the special sales and compensating use tax fund for the city of Yonkers established by section ninety-two-f of the state finance law at the times set forth in the preceding sentence.

* NB Effective until November 30, 2027

* (2) However, the taxes, penalties and interest from the additional one percent rate which the city of Yonkers is authorized to impose pursuant to section twelve hundred ten of this article, after the

comptroller has reserved such refund fund and such cost shall be paid to the special sales and compensating use tax fund for the city of Yonkers established by section ninety-two-f of the state finance law at the times set forth in the preceding sentence.

* NB Effective November 30, 2027

(3) However, the taxes, penalties and interest which (i) the county of Nassau, (ii) the county of Erie, to the extent the county of Erie is contractually or statutorily obligated to allocate and apply or pay net collections to the city of Buffalo and to the extent that such county has set aside net collections for educational purposes attributable to the Buffalo school district, or the city of Buffalo or (iii) the county of Erie is authorized to impose pursuant to section twelve hundred ten of this article, other than such taxes in the amounts described, respectively, in subdivisions one and two of section one thousand two hundred sixty-two-e of this part, during the period that such section authorizes Nassau county to establish special or local assistance programs thereunder, together with any penalties and interest related thereto, and after the comptroller has reserved such refund fund and such costs, shall, commencing on the next payment date after the effective date of this sentence and of each month thereafter, until such date as (i) the Nassau county interim finance authority shall have no obligations outstanding, or (ii) the Buffalo fiscal stability authority shall cease to exist, or (iii) the Erie county fiscal stability authority shall cease to exist, be paid by the comptroller, respectively, to (i) the Nassau county interim finance authority to be applied by the Nassau county interim finance authority, or (ii) to the Buffalo fiscal stability authority to be applied by the Buffalo fiscal stability authority, or (iii) to the Erie county fiscal stability authority to be applied by the Erie county fiscal stability authority, as the case may be, in the following order of priority: first pursuant to the Nassau county interim finance authority's contracts with bondholders or the Buffalo fiscal stability authority's contracts with bondholders or the Erie county fiscal stability authority's contracts with bondholders, respectively, then to pay the Nassau county interim finance authority's operating expenses not otherwise provided for or the Buffalo fiscal stability authority's operating expenses not otherwise provided for or the Erie county fiscal stability authority's operating

expenses not otherwise provided for, respectively, and then (i) pursuant to the Nassau county interim finance authority's agreements with the county of Nassau, which agreements shall require the Nassau county interim finance authority to transfer such taxes, penalties and interest remaining after providing for contractual or other obligations of the Nassau county interim finance authority, and subject to any agreement between such authority and the county of Nassau, to the county of Nassau as frequently as practicable; or (ii) pursuant to the Buffalo fiscal stability authority's agreements with the city of Buffalo, which agreements shall require the Buffalo fiscal stability authority to transfer such taxes, penalties and interest remaining after providing for contractual or other obligations of the Buffalo fiscal stability authority, and subject to any agreement between such authority and the city of Buffalo, to the city of Buffalo or the city of Buffalo school district, as the case may be, as frequently as practicable; or (iii) pursuant to the Erie county fiscal stability authority's agreements with the county of Erie, which agreements shall require the Erie county fiscal stability authority to transfer such taxes, penalties and interest remaining after providing for contractual or other obligations of the Erie county fiscal stability authority, and subject to any agreement between such authority and the county of Erie, to the county of Erie as frequently as practicable. During the period that the comptroller is required to make payments to the Nassau county interim finance authority described in the previous sentence, the county of Nassau shall have no right, title or interest in or to such taxes, penalties and interest required to be paid to the Nassau county interim finance authority, except as provided in such authority's agreements with the county of Nassau. During the period that the comptroller is required to make payments to the Buffalo fiscal stability authority described in the second previous sentence, the city of Buffalo and such school district shall have no right, title or interest in or to such taxes, penalties and interest required to be paid to the Buffalo fiscal stability authority, except as provided in such authority's agreements with the city of Buffalo. During the period that the comptroller is required to make payments to the Erie county fiscal stability authority described in the third previous sentence, the county of Erie shall have no right, title or interest in or to such taxes, penalties and interest

required to be paid to the Erie county fiscal stability authority, except as provided in such authority's agreements with the county of Erie.

(4) The amount so payable shall be certified to the comptroller by the commissioner or the commissioner's delegate, who shall not be held liable for any inaccuracy in such certificate. Provided, however, any such certification may be based on such information as may be available to the commissioner at the time such certificate must be made under this section and may be estimated on the basis of percentages or other indices calculated from distributions for prior periods.

(5) (i) However, the comptroller shall withhold from the taxes, penalties and interest imposed by the city of New York on and after August first, two thousand eight, and deposit such amounts to the state treasury as reimbursement for appropriated disbursements made by the New York state financial control board established by the New York state financial emergency act for the city of New York and by the state deputy comptroller for the city of New York established by section forty-one-a of the executive law, as the actual, reasonable expenses of that board or that deputy comptroller, incurred on behalf of the city, for quarterly periods commencing July first, two thousand eight, and ending on the date when those expenses are no longer incurred by that board or deputy comptroller; and the comptroller shall pay those withheld amounts immediately into the miscellaneous special revenue fund financial control board account 339-15 and the miscellaneous special revenue fund financial oversight account 339-DI of the state. During the period that the comptroller is required to withhold amounts and make payments described in this paragraph, the city of New York has no right, title or interest in or to those taxes, penalties and interest required to be paid into the above referenced miscellaneous special revenue funds.

(ii) After withholding the taxes, penalties and interest imposed by the city of New York on and after August first, two thousand eight as provided in subparagraph (i) of this paragraph, the comptroller shall withhold a portion of such taxes, penalties and interest sufficient to deposit annually into the central business district tolling capital lockbox established pursuant to section five hundred fifty-three-j of the public authorities law: (A) in state fiscal year two thousand nineteen - two thousand twenty, one hundred twenty-seven million five

hundred thousand dollars; (B) in state fiscal year two thousand twenty - two thousand twenty-one, one hundred seventy million dollars; and (C) in state fiscal year two thousand twenty-one - two thousand twenty-two and every succeeding state fiscal year, an amount equal to one hundred one percent of the amount deposited in the immediately preceding state fiscal year. The funds shall be deposited monthly in equal installments. During the period that the comptroller is required to withhold amounts and make payments described in this paragraph, the city of New York has no right, title or interest in or to those taxes, penalties and interest required to be paid into the above referenced central business district tolling capital lockbox.

(6) Where the amount so paid over to any city, county, school district or the special sales and compensating use tax fund for the city of Yonkers in any such distribution or to any such authority is more or less than the amount then due to such city, county, school district or such fund or to such authority, the amount of the overpayment or underpayment shall be certified to the comptroller by the commissioner or the commissioner's delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to such city, county, school district or the special sales and compensating use tax fund for the city of Yonkers or to such authority shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

(d) All of the provisions of this section shall apply to the taxes, penalties and interest from sales and compensating use taxes on sales and uses of motor fuel or diesel motor fuel imposed pursuant to this article except that the amount certified to the comptroller by the commissioner or the commissioner's delegate with respect to such taxes, penalties and interest shall be based upon the receipts from retail sales of motor fuel or diesel motor fuel sold each month at retail service stations and on other sales of such fuel for consumption by the

purchaser in each county and city imposing such taxes, the total receipts from taxes paid pursuant to the provisions of section eleven hundred two of this article on motor fuel and diesel motor fuel sold in this state each month, the total of the taxes, penalties and interest collected or received in such month with respect to retail sales and uses of motor fuel and diesel motor fuel (determined without regard to the refunds or credits allowed pursuant to subdivisions (a) and (b) of section eleven hundred twenty of this article), the sales tax rate applicable for that month in such county or city, the regional average retail sales price for such month, the amount of refunds and credits allowed pursuant to subdivisions (c) and (d) of section eleven hundred twenty of this article and such other data and standards as such commissioner or delegate may deem necessary for such certification. The commissioner or the commissioner's delegate shall arrive at the number of gallons of motor fuel and diesel motor fuel sold in each such county or city and in this state by use of the reports of the number of gallons sold required to be filed pursuant to section eleven hundred thirty-six of this chapter and such other information as such commissioner or delegate deems appropriate. In arriving at the amount to be certified and distributed, the commissioner shall consider the collections of the taxes, penalties and interest required to be paid pursuant to the provisions of section eleven hundred two of this article and the authorized refunds and credits of the tax imposed by section eleven hundred two of this article against the taxes required to be collected or paid pursuant to this article.

(e) The total net collections from a tax imposed pursuant to section twelve hundred eleven by a city and a school district or school districts, so authorized, shall be distributed and paid to the city school district where it is coterminous with or includes the entire city or to all the school districts partly within or wholly within such city. Except where the city school district is coterminous with the city or includes the entire area of the city, such amounts shall be distributed and paid to the school district or districts partly within or wholly within the city, in accordance with the total average daily attendance for the last preceding school year of pupils residing in each such district and without regard to the location of the school attended.

(f) Notwithstanding any provision of state or local law, ordinance or

resolution to the contrary, if the commissioner of health timely certifies to the commissioner that a county which imposes sales and compensating use taxes pursuant to the authority of section twelve hundred ten, twelve hundred ten-A, twelve hundred ten-B or twelve hundred ten-C of this article properly exercised its option by September thirtieth, two thousand seven, pursuant to section two of the chapter of the laws of two thousand five which added this subdivision, that such county be reimbursed for medical assistance expenditures as provided in such section two of such chapter, then the commissioner shall calculate the Medicaid amount of each such county. The amount due each month to each such county provided for in subdivision (c) of this section shall be reduced by the monthly Medicaid amount; and such monthly Medicaid amount of each such county shall instead be paid into the general fund of the state treasury to the credit of the state purposes account therein. The calculation of each such county's Medicaid amount and monthly Medicaid amounts and the procedures governing the payment of such amounts shall be as follows:

(1) The commissioner of health shall furnish the commissioner with the amount of every county's "two thousand six-two thousand seven fiscal year social services district expenditure cap amount," as provided in paragraph (e) of section one of a chapter of the laws of two thousand five which added this subdivision, as soon as practicable but no later than April first, two thousand seven.

(2) The commissioner shall calculate the "Medicaid factor" for every county as follows and shall notify each county's chief fiscal officer of the results of such calculation by April thirtieth, two thousand seven, to help each county determine whether to exercise such option:

(A) for a county in which no city exercises any prior right to impose sales or compensating use taxes authorized by section twelve hundred ten of this article, first, divide the total amount of sales and compensating use tax distributions to such county during state fiscal year two thousand six-two thousand seven by the county's general rate of such taxes during such period, and then divide the county's "two thousand six-two thousand seven fiscal year social services district expenditure cap amount" by the quotient of the first division;

(B) for a county in which one or more cities exercise any prior right to impose sales or compensating use taxes authorized by section twelve

hundred ten of this article and the combined rate of the county's and city's taxes in each such city equals the general rate of the county's taxes on similar transactions in the area of the county outside such city or cities, first, add the total amounts of sales and compensating use tax distributions to such county and to each such city during state fiscal year two thousand six-two thousand seven and divide such sum by the county's general rate of such taxes during such period, and then divide the county's "two thousand six-two thousand seven fiscal year social services district expenditure cap amount" by the quotient of the first division; and

(C) for a county in which one or more cities exercise any prior right to impose sales or compensating use taxes authorized by section twelve hundred ten of this article and the combined rate of the county's and city's taxes in any such city does not equal the general rate of the county's taxes on similar transactions in the area of the county outside such city or cities:

(i) for each such city, add the total amount of sales and compensating use tax distributions to such city during state fiscal year two thousand six-two thousand seven and divide such sum by the city's effective general rate of such taxes during such period, then multiply such quotient by the amount by which the city's rate forced a reduction in the county's rate of such taxes in such city during such period, and then

(ii) add the amount derived in clause (i) of this subparagraph for each such city to the total amount of sales and compensating use tax distributions to such county during state fiscal year two thousand six-two thousand seven;

(iii) divide the total of the addition in clause (ii) of this subparagraph by the county's general rate of such taxes during such period; and

(iv) divide the county's "two thousand six-two thousand seven fiscal year social services district expenditure cap amount" by the quotient of the division in clause (iii) of this subparagraph.

(D) The commissioner shall consider any change in a county's or city's general rate of sales and compensating use taxes which takes effect during state fiscal year two thousand six-two thousand seven and the number of months such rates are in effect during such state fiscal year

in order to perform accurately the calculations provided for in this paragraph.

(3) By the twelfth day of each month, commencing in January, two thousand eight, the commissioner shall calculate the "monthly Medicaid amount" of each such county which has made the election described in the opening paragraph of this subdivision and certify such amounts to the comptroller. The comptroller shall reduce the amount due each month to each such county provided for in subdivision (c) of this section by such monthly Medicaid amount; and the comptroller shall instead each month pay the monthly Medicaid amount of each such county into the general fund of the state treasury to the credit of the state purposes account therein, provided, however, that the comptroller, subject to the limitations provided in paragraphs five and six of this subdivision, shall each month collect the amount of Nassau county's reduction from amounts payable to such county by the Nassau county interim finance authority while such authority exists.

(4) "Monthly Medicaid amount" shall mean the result of the following calculations:

(A) for a county described in subparagraph (A) of paragraph two of this subdivision, first, the amount of the comptroller's payment due such a county in the immediately preceding month, as described in subdivision (c) of this section and as described in sections twelve hundred ten-A, twelve hundred ten-B and twelve hundred ten-C of this article, but without regard to whether the comptroller is to pay all or a portion of such amount to another entity described in subdivision (c) of this section and without regard to the revenue disposition provisions of such section twelve hundred ten-A, twelve hundred ten-B or twelve hundred ten-C, and considered without regard to any Medicaid amount, shall be divided by the county's general rate of sales and compensating use taxes in such month; and the quotient of that division shall be multiplied by the Medicaid factor calculated as provided in subparagraph (A) of paragraph two of this subdivision.

(B) for a county described in subparagraph (B) of paragraph two of this subdivision, first, add the amount of the comptroller's payment due any city in such a county in the immediately preceding month, as described in subdivision (c) of this section to the amount of the comptroller's payment due such a county in the immediately preceding

month, as described in subdivision (c) of this section and as described in sections twelve hundred ten-A, twelve hundred ten-B and twelve hundred ten-C of this article, but without regard to whether the comptroller is to pay all or a portion of such amount to another entity described in subdivision (c) of this section and without regard to the revenue disposition provisions of such section twelve hundred ten-A, twelve hundred ten-B or twelve hundred ten-C, and considered without regard to any Medicaid amount, then divide the total of such amounts by the county's general rate of sales and compensating use taxes in such month; and the quotient of that division shall be multiplied by the Medicaid factor calculated as provided in subparagraph (B) of paragraph two of this subdivision.

(C) For a county described in subparagraph (C) of paragraph two of this subdivision:

(i) with respect to each such city described in subparagraph (C), divide the amount of the comptroller's payment due each such city in the immediately preceding month, as described in subdivision (c) of this section, by the effective general rate of such city's taxes during such month and multiply such quotient by the amount by which the city's rate forced a reduction in the county's rate of such taxes in such city during such month;

(ii) add the amount or amounts derived in clause (i) of this subparagraph to the amount of the comptroller's payment due such county in the immediately preceding month, as described in subdivision (c) of this section and as described in sections twelve hundred ten-A, twelve hundred ten-B and twelve hundred ten-C of this article, but without regard to whether the comptroller is to pay all or a portion of such amount to another entity described in subdivision (c) of this section and without regard to the revenue disposition provisions of such section twelve hundred ten-A, twelve hundred ten-B or twelve hundred ten-C, and considered without regard to any Medicaid amount; and

(iii) divide the total of the addition in clause (ii) of this subparagraph by the county's general rate of such taxes during such month, and the quotient of that division shall be multiplied by the Medicaid factor calculated as provided in subparagraph (C) of paragraph two of this subdivision.

(5) If for any reason a county's monthly Medicaid amount is greater

than the amount of the comptroller's net payment to the county for that month under subdivision (c) of this section and under sections twelve hundred ten-A, twelve hundred ten-B and twelve hundred ten-C of this article, after the comptroller has made any payments to other entities required by subdivision (c) of this section or by any other law and after any payment, deposit, appropriation, transfer or expenditure required or authorized by such section twelve hundred ten-A, twelve hundred ten-B or twelve hundred ten-C, the comptroller shall, at the same time that the comptroller makes the payment and reduction described in paragraph three of this subdivision, bill such county an amount equal to the difference and such county shall pay in full the amount of such bill to the comptroller by the twenty-fifth day of such month. Such county shall use any funds available to it to pay such bill. The comptroller shall deposit any such amounts received into the general fund of the state treasury to the credit of the state purposes account therein.

(6) If a county does not remit the required monies or pay in full a bill described in paragraph five of this subdivision by the twenty-fifth day of the month in accordance with paragraph five of this subdivision, the comptroller shall, as soon as any other moneys payable to the county are available, either deduct any amount not paid from the amount of the next payment or payments due such county pursuant to subdivision (c) of this section until such amount not paid has been recovered or, in the alternative and at the comptroller's discretion, deduct any amount not paid from the amount of any other moneys payable to such county from the comptroller and not subject to any lien or pledge for the benefit of bondholders of the Nassau county interim finance authority or of any public benefit corporation, as defined in section sixty-six of the general construction law, created by interstate compact or at least half of whose members are appointed by the governor, until such amount not paid has been recovered. The comptroller shall deposit any amounts so deducted and recovered into the general fund of the state treasury to the credit of the state purposes account therein.

(7) This subdivision shall apply to payments required in respect of a county to be made on January twelfth, two thousand eight, and thereafter.

(8) Nothing in this subdivision shall be construed to relieve a county

of any obligation or commitment to distribute and pay or allocate net collections pursuant to this part, regardless whether such obligation or commitment arises before or after the date this subdivision shall have taken effect, or to preclude a city in a county from exercising its prior rights under section twelve hundred twenty-four of this article. To the extent that a county's net collections have been diminished below a level sufficient to meet any such obligation or commitment as a result of the reductions or bills provided for in this subdivision, such county shall hereby be authorized to use any other funds available to it to meet such obligation or commitment, notwithstanding any law to the contrary.

(9) If a county adopts or amends a local law, ordinance or resolution to repeal its sales and compensating use taxes, then, effective on the first day of the first month on which such repeal takes effect, such county's resolution electing to be reimbursed for certain medical assistance expenditures pursuant to section two of the chapter of the laws of two thousand five which added this subdivision shall also be repealed automatically as of such date; and the commissioner shall notify the commissioner of health of such county's repeal of such taxes. In that event, as of such date, such county shall be treated as if it had never made such election for purposes of such expenditures and such commissioner of health shall thenceforth compute the amount due monthly from such county for such expenditures pursuant to section one of the chapter of the laws of two thousand five which added this subdivision.

(g) Notwithstanding any provision of state or local law, ordinance or resolution to the contrary, if the commissioner of health timely certifies to the commissioner that a city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect or which imposes sales and compensating use taxes pursuant to the authority of section twelve hundred ten of this article properly exercised its option by September thirtieth, two thousand seven, pursuant to section two of the chapter of the laws of two thousand five which added this subdivision, that such city be reimbursed for medical assistance expenditures as provided in such section two of such chapter, then the commissioner shall calculate the Medicaid amount of such a city. The amount due each month to such a city with respect to such taxes and certain other taxes shall be

reduced; and the amount of each such reduction shall instead be paid into the general fund of the state treasury to the credit of the state purposes account therein. The calculation of such a city's Medicaid amount and reductions and the procedure governing the payment of such amounts are as follows:

(1) The commissioner of health shall furnish the commissioner with the amount of such a city's "two thousand six-two thousand seven fiscal year social services district expenditure cap amount," as provided in paragraph (e) of section one of the chapter of the laws of two thousand five which added this subdivision, as soon as practicable but no later than April first, two thousand seven.

(2) The commissioner shall use or calculate the following amounts in respect of such a city, which amounts shall be designated by the following symbols, in order to determine the components of the monthly amount described in paragraph three of this subdivision and shall notify the chief fiscal officer of such city of the calculated value of "D" as described in this paragraph and such other information available relating to D, by April thirtieth, two thousand seven, to help such city determine whether to exercise such option:

(A) "A" shall equal the amount of such a city's "two thousand six-two thousand seven fiscal year social services district expenditure cap amount," as furnished by the commissioner of health pursuant to paragraph one of this subdivision;

(B)(i) "B1" shall equal the total amount of sales and compensating use tax distributions during state fiscal year two thousand six-two thousand seven to such city or to a municipal assistance corporation on such city's behalf from taxes imposed in such city by section eleven hundred seven of this chapter, other than taxes imposed by subdivision (c) of such section eleven hundred seven, at the rate of three percent;

(ii) "B2" shall equal the total amount of sales tax distributions during state fiscal year two thousand six-two thousand seven to such city or to a municipal assistance corporation on such city's behalf from taxes imposed in such city by subdivision (c) of section eleven hundred seven of this chapter, at the rate of three percent;

(C) "C" shall equal the total amount of sales and compensating use tax distributions during state fiscal year two thousand six-two thousand seven to such city from its taxes imposed pursuant to the authority of

section twelve hundred twelve-A of this article; and

(D) "D" shall be the "Base Year PIT intercept amount" and shall equal A less the sum of B1, B2 and C.

(3) (A) Commencing in January, two thousand eight, the commissioner shall calculate the monthly Medicaid amount ("MA") for such city according to the following formula: $MA \text{ equals } (((En/Fn) + (Ep/Fp)) \times (.03)) + (C/12) \times (G) + (D/12) \times (G)$; where C and D equal the amounts described in paragraph two of this subdivision; "En" equals the current month's portion of revenues from taxes imposed by section eleven hundred seven of this chapter, excluding revenues from the tax on parking imposed by subdivision (c) of such section eleven hundred seven, or from taxes imposed pursuant to the authority of subdivision (a) of section twelve hundred ten of this article, excluding revenues from the tax on parking authorized by subdivision (a) of such section twelve hundred ten; "Ep" equals the current month's revenues from either such tax on parking, as the case may be; "Fn" equals the current month's general rate of sales and use taxes imposed by such section eleven hundred seven or pursuant to the authority of such section twelve hundred ten, other than on parking; "Fp" equals the current month's rate of sales tax on parking under or pursuant to the authority of such section eleven hundred seven or twelve hundred ten, as the case may be; "G" equals a growth factor according to the formula $G \text{ equals } (En/Fn) + (Ep/Fp) \text{ divided by } ((MB1/.04) + (MB2/.06))$; "MB1" equals the revenues from taxes imposed by section eleven hundred seven of this chapter, excluding revenues from such tax on parking imposed by subdivision (c) of such section eleven hundred seven, during the same month of state fiscal year two thousand six-two thousand seven corresponding to the current month described above; and "MB2" equals the revenues from such tax on parking during the same month of state fiscal year two thousand six-two thousand seven corresponding to the current month described above.

(B) Using the amount of MA calculated each month in subparagraph (A) of this paragraph, the commissioner shall then calculate the amounts of sales and use tax revenues (E + H, where E and H equal the amounts described in subparagraph (C) of this paragraph) and personal income tax revenues (PIT) of such city which are to be intercepted or billed for as described in this subdivision, according to the formula $MA \text{ equals } E + H + PIT$, as PIT is defined in subparagraph (D) of this paragraph. By the

twelfth day of each month, commencing in January, two thousand eight, the commissioner shall establish the amount of E and H and certify such amounts to the comptroller and by the fifteenth day of each month, commencing in January, two thousand eight, the commissioner shall establish the amount of PIT and certify such amount and the amount of MA to the comptroller, in the manner set forth in this paragraph.

(C) (i) For the period commencing January first, two thousand eight, and ending on the last day of the month in which the taxes imposed in such a city by section eleven hundred seven of this chapter shall expire, the sales and use tax component "E" shall equal the amount of revenues from such taxes imposed at the rate of three percent or the amount of revenues from such taxes imposed at the rate of four percent after payments to the municipal assistance corporation for such a city required under section ninety-two-d of the state finance law have been made, whichever amount is less, and "H" shall equal net collections from taxes imposed by such a city pursuant to the authority of section twelve hundred twelve-A of this article, due such a city in the immediately preceding month.

(ii) For the period commencing on the first day of the first month following the period described in clause (i) of this subparagraph, the sales and use tax component "E" shall equal net collections from sales and compensating use taxes imposed by such city pursuant to the authority of subdivision (a) of section twelve hundred ten of this article up to the rate of three percent and "H" shall equal net collections from taxes imposed by such city pursuant to the authority of section twelve hundred twelve-A of this article, due such a city in the immediately preceding month.

(D) For the period commencing January first, two thousand eight, the PIT component for each month shall be designated "PIT" and shall equal the portion of the revenues from taxes imposed by such city pursuant to the authority of article thirty of this chapter due such a city in the immediately preceding month, calculated according to the formula: $PIT = MA - E - H$.

(E)(i) During the period that the taxes imposed in such a city by section eleven hundred seven of this chapter are in effect, the comptroller shall each month, after paying amounts certified to by the chairperson of the municipal assistance corporation created in aid of

such city, as provided for in section ninety-two-d of the state finance law, pay the relevant portion of the sales and use tax component relating to such taxes imposed by such section eleven hundred seven for such month equal to E into the general fund of the state treasury to the credit of the state purposes account therein.

(ii) During the period that the taxes imposed by such a city pursuant to the authority of section twelve hundred ten of this article are in effect, the comptroller shall reduce the amount due each month to such city from such taxes provided for in subdivision (c) of this section by the relevant portion of the sales and use tax component for such month equal to E; and the comptroller shall instead each month pay such portion into the general fund of the state treasury to the credit of the state purposes account therein.

(iii) The comptroller shall reduce the amount due each month to such city from taxes imposed pursuant to the authority of section twelve hundred twelve-A provided for in subdivision (c) of this section by the relevant portion of the sales and use tax component for such month equal to H; and the comptroller shall instead each month pay such portion into the general fund of the state treasury to the credit of the state purposes account therein.

(iv) The comptroller shall each month certify to the New York city transitional finance authority the monthly amount of PIT and such authority shall, after applying amounts described in section thirteen hundred thirteen of this chapter, immediately pay such monthly amount, or so much of which is available after applying such amounts, directly and immediately to the comptroller; and the comptroller shall upon receipt of such moneys, subject to the exceptions in such section thirteen hundred thirteen, pay them into the general fund of the state treasury to the credit of the state purposes account therein.

(4) If for any reason such a city's Medicaid amount in a month (MA) is greater than the sum of the amounts of the comptroller's net payments to such city for that month under subdivision (c) of this section, under section twelve hundred twelve-A of this article and under section thirteen hundred thirteen of this chapter, after the comptroller has made any payments to other entities required by any law and after any payment, deposit, appropriation, transfer or expenditure required or authorized by any of such sections, the comptroller shall, at the same

time that the comptroller makes the payments and reductions described in paragraph three of this subdivision, bill such city an amount equal to the difference and such city shall pay in full the amount of such bill to the comptroller by the twenty-fifth day of such month. Such city shall use any funds available to it to pay such bill. The comptroller shall deposit any such amounts received into the general fund of the state treasury to the credit of the state purposes account therein.

(5) If such a city does not pay in full a bill described in paragraph four of this subdivision by the twenty-fifth day of the month in accordance with such paragraph four, the comptroller shall, as soon as any other moneys payable to the city are available, either deduct any amount not paid from the amount of the next payment or payments due such city pursuant to subdivision (c) of this section, section twelve hundred twelve-A of this article or section thirteen hundred thirteen of this chapter, until such amount not paid has been recovered or, in the alternative and at the comptroller's discretion, deduct any amount not paid from the amount of any other moneys payable to such city from the comptroller and not subject to any lien or pledge for the benefit of bondholders of the transitional finance authority or of the municipal assistance corporation, until such amount not paid has been recovered. The comptroller shall deposit any amounts so deducted and recovered into the general fund of the state treasury to the credit of the state purposes account therein.

(6) This subdivision shall apply to payments required in respect of a city to be made on January twelfth, two thousand eight, and thereafter.

(7)(A) If such a city adopts or amends a local law, ordinance or resolution to repeal its sales and compensating use taxes imposed pursuant to the authority of subdivision (a) of section twelve hundred ten of this article, then, effective on the first day of the first month on which such repeal takes effect, such city's resolution electing to be reimbursed for certain medical assistance expenditures pursuant to section two of the chapter of the laws of two thousand five which added this subdivision shall also be repealed automatically as of such date; and the commissioner shall notify the commissioner of health of such city's repeal of such taxes. In that event, as of such date, such city shall be treated as if it had never made such election for purposes of such expenditures and such commissioner of health shall thenceforth

compute the amount due monthly from such city for such expenditures pursuant to section one of such chapter of the laws of two thousand five.

(B) If such city adopts or amends a local law to repeal its taxes on personal income authorized by article thirty of this chapter, the comptroller shall bill such city monthly in the manner provided in paragraph four of this subdivision for any amounts due under this subdivision which otherwise would have been paid out of revenues from such taxes into the general fund of the state treasury pursuant to this subdivision, and such bills shall be paid as provided in paragraph four of this subdivision and any bill not paid shall be treated as provided in paragraph five of this subdivision.

§ 1261-a. Revenues from certain taxes imposed by Washington and Warren counties. (a) In the event that the Warren and Washington county industrial development agency established under article eighteen-A of the general municipal law issues bonds, notes or other obligations secured by the service fee obligations of the counties which, in turn, are secured by a pledge by Warren and Washington counties of payments of net collections from taxes imposed by such counties pursuant to the authority of subdivision (a) of section twelve hundred ten of this article, as authorized by the act which enacted this section, such industrial development agency shall provide a certified written notice to the state comptroller that it has issued, or is about to issue, such notes, bonds or other obligations. Such notice shall set forth in detail the term, amount, interest rate and payment schedule of such bonds, notes or other obligations, and the amounts due from each county attributable to net collections from the respective counties, as described in subdivision (b) of this section, together with such other information as the comptroller shall require. Such agency shall provide a copy of such notice to the chief fiscal officer of each such county. Such agency shall provide the first of such notices to the comptroller at least ninety days prior to the date that the comptroller is expected to pay net collections, as described in subdivision (b) of this section, and then at least ninety days prior to the beginning of each county's fiscal year thereafter, until the comptroller is no longer expected to

make such payments of such net collections, provided that the first notice to the comptroller under this section may contain estimates of the term, amount, interest rate and payment schedules before the bonds, notes or other obligations are issued in which case such agency shall give a corrected notice to the comptroller within ten days after such bonds, notes or other obligations are issued. If such agency gives such an estimated notice and such bonds, notes or other obligations are not issued, such agency shall give further notice to the comptroller that net collections shall not be withheld from the counties.

(b) Upon the comptroller receiving (i) such complete, certified written notice from such agency, and (ii) certified copies of resolutions adopted by majority vote of the board of supervisors of each such county (both and each of such boards concurring) authorizing and requesting the comptroller to make such payments from such net collections due such counties as the counties have agreed upon with such agency, at least ninety days prior to the date that the comptroller is expected to make the first payment under this section, the comptroller shall, notwithstanding any provision of section twelve hundred sixty-one of this article to the contrary, pay, on or before the fifteenth day of each month, all or a portion of the net collections due Warren county, but only out of net collections attributable to taxes imposed by such county at the rate of one and one half percent pursuant to the authority of subdivision (a) of section twelve hundred ten of this article (or, in the event that Warren county's pledge is substituted, then only out of net collections available to such county as a result of such substituted pledge, as such substituted pledge and net collections are described in subdivision i of section one of chapter five hundred one of the laws of nineteen hundred ninety-nine, as added by the chapter of the laws of two thousand which added this subdivision) and all or a portion of the net collections due Washington county, but only out of the net collections attributable to taxes imposed by such county at the rate of three percent pursuant to the authority of subdivision (a) of such section twelve hundred ten, as authorized by such counties' resolutions, to such agency, on account of, and for the benefit of, such counties to meet such counties' responsibilities under agreements amongst such counties and such agency and the holders of such bonds, notes or other obligations which are subject to such a pledge, or to the trustee of

such bonds, notes or other obligations. If so requested by both the agency, as indicated in its notice to the comptroller, and by the counties, as indicated in their concurring resolutions filed with the comptroller, the comptroller shall make such payments to a trustee pursuant to an indenture for bondholders or holders of notes or other obligations, issued by such agency with respect to the Adirondack resource recovery facility pursuant to the authority of the law which enacted this section. Such payments by the comptroller on behalf of such counties shall be applied monthly by such agency or, if paid directly to the trustee, by such trustee, to pay the portion of service fees measured by debt service costs or such other or additional portions of the service fees that the counties shall authorize by resolution of each of their respective boards of supervisors for solid waste disposal for the counties pursuant to agreements entered into or to be entered into concerning solid waste disposal fees, which agreements shall require such agency or such trustee to electronically transfer the balances of such payments not required to meet contractual obligations to the respective county on or before the first day of the next succeeding month.

(c) The comptroller shall not be responsible for any inaccuracy in the amount of such payments based upon the schedule in the notice furnished by such agency. The comptroller shall not be required to make payments under this subdivision which are greater than the amounts of net collections due Warren county from its tax imposed at the rate of one and one half percent (or, in the event that Warren county's pledge is substituted, due such county from its tax as available in the event of such substituted pledge, as such substituted pledge and net collections are described in subdivision i of section one of chapter five hundred one of the laws of nineteen hundred ninety-nine, as added by the chapter of the laws of two thousand which added this subdivision) or due Washington county from its tax imposed at the rate of three percent and available in the account described in subdivision (c) of section twelve hundred sixty-one of this article, as certified to the comptroller by the commissioner as provided in such subdivision (c) of section twelve hundred sixty-one. Any balance of net collections due such counties after the comptroller makes any payments required under this section shall be paid to such counties in the manner provided in such

subdivision (c) of section twelve hundred sixty-one. The comptroller shall be required to make payments under this section for only so long as the counties are required to make payments of such net collections under the payment schedule set forth in such agency's notice to the comptroller.

(d) The comptroller may rely, without further inquiry, that Washington county has incurred obligations to the agency, and Warren county similarly has incurred obligations of Warren county to Washington county and/or the agency, and that agreements have been duly approved by the board of supervisors for each county and executed by the chairman of the board of supervisors for each county authorizing use of net collections as authorized in this section, payable by them, for all or a portion of service fees measured by debt service and payments to reserve funds in connection with any outstanding bonds, notes or other obligations now, or hereafter issued by the agency for such purposes or such other portions or additional portions of the service fees that the counties shall authorize by resolution of each of their respective boards of supervisors, and arising out of financing or refinancing of the Adirondack resource recovery facility including the financing of the purchase of any rights of private parties to acquire such facility through an installment sale.

§ 1262. Disposition of revenues from taxes imposed by cities under one million, counties and school districts. (a) Except as otherwise provided in this article, the local law, ordinance or resolution imposing any county tax pursuant to this article may set aside for county purposes or educational purposes all or any portion of the net collections therefrom. In the event all or a portion of the net collections are so set aside for educational purposes, the amounts thereof shall be distributed and paid quarterly to the several school districts in the county in accordance with the total average daily attendance for the last preceding school year of pupils residing in each such district (without regard to the location of the school attended), provided, however, that in the case of school districts which are partially within and partially without the county, such county shall make a distribution to each such school district in accordance with the total average daily

attendance of the pupils in such school district who reside in such county and in any such case, the amount to be raised by school taxes by the district from the portion of such district within such county shall be reduced by the amount so distributed.

(b) In the county of Monroe amounts not set aside for county purposes shall be allocated quarterly to the city of Rochester and the area in the county outside the city of Rochester in proportion to their respective populations, determined in accordance with the latest federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county, provided, however, that a special population census shall not be taken more often than once in every two years. The county legislature may, by resolution adopted annually, provide that of the amount so allocated to the area outside the city of Rochester a portion thereof be allocated and paid to the several school districts in such area in accordance with the number of public school pupils residing in said districts and enrolled in kindergarten and grades one to twelve inclusive at the close of the school year next preceding the date of the adoption of said resolution. An enrollment for a regular half day session shall be counted as one-half enrollment. The location of the school attended shall not be considered except as hereinafter provided for pupils attending city schools without the payment of tuition. In the case of school districts which are partially within and partially without the county payment shall be made to each such school district in accordance with the enrollment of the pupils in such school district who reside in such county. In all cases the amount to be raised by school taxes by the school districts upon property within the district or that portion of the district within the county shall be reduced by the amount of tax revenue so received. Each school district receiving said money shall indicate on each individual school tax bill the amount of tax proceeds received from the county of Monroe for that fiscal year. In the case of pupils who reside in the area outside the city and who, by law, are attending public schools in the city of Rochester without payment of tuition, the distribution of tax revenue based on the enrollment of those pupils shall be paid to the city of Rochester. The amount allocated to the area outside the city of

Rochester, less the amount, if any, so distributed to the school districts and paid to the city of Rochester as above provided, and the amount allocated to the city of Rochester shall be applied as provided for by subdivision (c) of this section except that the county legislature may provide by resolution that where any village elects to have the amount which would otherwise be applied to reduce county taxes and general town taxes upon real property in such village paid directly to such village in lieu of such tax reduction, the portion of the amount allocated, pursuant to subdivision (c) of this section, to the town in which such village is wholly or partly situated which is to be paid directly to such village shall be determined by the ratio which the population of such village, or portion thereof within the town, bears to the population of the entire town, determined in accordance with the latest federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the town. Provided, however, in determining such portion to be paid directly to such village, such population ratio may be applied to no more than one-half of the amount allocated to such town pursuant to subdivision (c) of this section. Provided, further, that any resolution so enacted by the county legislature shall only be effective for the calendar year or years subsequent to its enactment and such resolution must be enacted before the first day of October preceding the calendar year to which it applies. Such resolution shall remain in effect for subsequent calendar years unless rescinded by a resolution, but the enactment which rescinds it must be enacted prior to the first day of October preceding the calendar year for which the rescission is to apply.

(c) Amounts not set aside for county purposes or educational purposes shall, except as otherwise provided in this section, be allocated quarterly to the cities and the area in the county outside the cities in proportion to their respective populations, determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county, or in such other proportion as may be agreed upon by the

elective governing body of the county and of each of the cities in the county with the approval of the state comptroller, provided however, that where a county does not contain a city, such amounts shall be so allocated to the entire area of the county. Any such agreement or approval thereof may be for a limited period. The amount so allocated to the area outside the cities, or to the entire area of the county where the county does not contain a city, shall be applied first to reduce county taxes levied upon real property in the several towns in such area. Any balance remaining shall then be applied to reduce general town taxes levied upon real property in such area. In a county having a city wholly contained therein having more than four hundred thousand inhabitants according to the latest federal or special population census referred to above, if any town, by local law, ordinance, or resolution shall so provide, all or part of such amount shall be paid directly to such town and shall be applied first to reduce general town taxes levied upon real property in the town. Any balance remaining shall then be used to reduce county taxes levied upon real property in the town. Any town, other than a town within a county having a population of one million or more and containing not more than three towns, or other than a town within a county having a population of not less than seven hundred thousand or more than eight hundred thousand, by local law, ordinance or resolution, however, may provide that all or any specified part of the amounts which would be so applied to reduce the county taxes and general town taxes levied upon real property in such town shall be paid directly to such town to be used for any town purpose. If any village, other than a village within a county having a population of one million or more and containing not more than three towns, by local law, ordinance or resolution shall so provide, the amounts which would be so applied to reduce the county and general town taxes levied upon real property in such village shall be paid directly to such village in lieu of such tax reduction. Where any village has elected to be paid directly as provided in this subdivision, the amount to be paid to such village shall be determined by the ratio that the full valuation of real property in the village or portion thereof within the town in which such village is located bears to the full valuation of real property in the entire town. If a village wholly or partially within a town has so elected to be paid directly, but the town in which such village is located has not so

elected, the amount allocated to the town in which such village is wholly or partially situated shall be applied to reduce county taxes and general town taxes in the area of the town outside such village. If the amount allocated to a town exceeds the amount of the county taxes and general town taxes levied upon real property in the town, the excess shall be apportioned between the town and each village, if any, wholly or partially situated therein, in the ratios that the full valuation of real property in each such village or portion thereof within the town, and the full valuation of real property in the portion of the town outside of such village or villages, respectively, bear to the aggregate full valuation of the entire town. The share of each such village shall be paid directly to such village. The share of the town shall be applied, first, to reduce taxes levied for part-town activities, and any balance remaining shall be paid directly to the town, to be used only for part-town activities. If a town and all the villages therein shall have elected to be paid directly as provided in this subdivision, the share of such town shall be applied to reduce taxes levied for part-town activities, and any balance remaining or portion thereof, in the discretion of the town board, may be applied to reduce general town taxes, county taxes levied in the area of the town outside of such villages or may be used for part-town activities, or any combination thereof. If a town containing more than one village shall have elected to be paid directly and one or more but not all of the villages shall have also elected to be paid directly, the share of the town shall be applied to reduce general town taxes levied in the area of the town outside of the village or villages that have so elected, and any balance remaining or portion thereof, in the discretion of the town board, may be applied to reduce county taxes levied in the area of the town outside of such village or villages. The amount to be applied in reduction of county taxes and general town taxes in each town may be determined on the basis of the ratio which the full valuation of real property in each town bears to the aggregate full valuation of real property in all of the towns in such county. The amount allocated to each city shall be similarly applied to reduce the county tax levied upon real property in such city, except that if any such city, except a city within a single county having a population of one million or more and containing not more than three towns, by local law, ordinance or resolution shall so

provide, the amount which would be so applied to reduce the county tax levied upon real property in such city shall be paid directly to the city in lieu of such tax reduction. If the amount allocated to a city exceeds the amount of the county tax levied upon real property in such city, such excess shall be paid to such city.

Notwithstanding any provision of this section to the contrary, where a municipal assistance corporation has been created under article ten of the public authorities law for a city located in a county, any amount which such county allocates to such city under this subdivision shall be payable directly to such city and shall not be provided by reduction of the county tax levied upon real property in such city for so long as such municipal assistance corporation shall exist.

In the alternative, the amount to be applied in reduction of county taxes and general town taxes in each town may be determined on the basis of the respective populations of the several towns in such county, determined in accordance with the latest federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county.

Any local law, ordinance or resolution enacted by a city, town or village pursuant to this subdivision shall only be effective for the calendar year or years subsequent to its enactment and, further, shall only be effective if it is mailed by registered or certified mail to the chief fiscal officer of the county in which the city, town or village is located before the first day of September preceding the calendar year for which the election is made by such local law, ordinance or resolution. Such local law, ordinance or resolution shall remain in effect for subsequent calendar years until rescinded by local law, ordinance or resolution, but the enactment shall rescind the election only if it is mailed, in the same manner already provided for in this subdivision, to the chief fiscal officer of the county in which the city, town or village is located before the first day of September preceding the calendar year for which the rescission is to apply. The

foregoing provisions of this paragraph notwithstanding, where a county imposes a sales and use tax to be effective on a date after the adoption of its budget but within the fiscal year for which such budget has been adopted, and the estimated revenues from such tax include an amount not set aside for county purposes or educational purposes, and such amount has not been included in budget revenues for such fiscal year for allocation in reduction of taxes on real property as provided in this subdivision, a local law, ordinance or resolution enacted by a city, town or village pursuant to this subdivision shall be effective as of the effective date of such tax if mailed by registered or certified mail to the chief fiscal officer of the county in which the city, town or village is located within thirty days after the enactment by the county of the local law, ordinance or resolution imposing such tax.

The foregoing provisions of this subdivision notwithstanding, in the county of Orange where any village within such county has elected to be paid directly as provided in this subdivision, the amount to be paid to such village shall be determined by the ratio that the population of such village or portion thereof within the town in which such village is located bears to the total population of the entire town, except that this provision shall not apply to the village of Highland Falls for which the amount to be paid shall be determined by the foregoing provisions of this subdivision. The population shall be determined in accordance with the latest federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of such county.

The foregoing provisions of this subdivision notwithstanding, in the county of Monroe, beginning in nineteen hundred ninety-six, towns located within the county shall be paid directly that part of the net collections for the quarterly allocations which are determined to be allocable to such towns and are in excess of thirteen million seven hundred fifty thousand dollars (fifty-five million dollars annually, the "base amount"), if any, derived solely from the imposition of sales and compensating use taxes by the county at the three percent rate

authorized by the opening paragraph of section twelve hundred ten of this article, which would otherwise be so applied to reduce county taxes and general town taxes levied upon real property in such towns, provided, however, if the annual allocation to such towns is less than the base amount, a sum equal to the difference between the allocation and the base amount shall be deducted from the immediately following payment or payments to be made directly to such towns as required to satisfy such sum in full, and provided further, however, that any adjustments necessary to reconcile the amounts applied to reduce the county taxes and general town taxes levied upon real property in the towns for the years nineteen hundred ninety-four and nineteen hundred ninety-five to the actual allocations to the towns for such years shall be made against the amounts to be paid to the towns in the years nineteen hundred ninety-seven and thereafter. In the event that the annual allocation to such towns is less than the base amount for at least two consecutive years, a sum equal to the difference between the allocation and the base amount shall be deducted from the amount applied to reduce county taxes and general town taxes levied upon real property in such towns in the year or years following such consecutive years until the annual allocation to such towns exceeds the base amount, the foregoing provisions of this subdivision or any other law notwithstanding. If the state reduces the rate of taxation authorized for Monroe county by section twelve hundred ten of this article or reduces the amount distributed by the state to Monroe county from the taxes, penalties and interest imposed by Monroe county pursuant to this article, the county shall have the right to adjust the amount applied to reduce county taxes and general town taxes levied upon real property in subsequent years.

(d) (1) Where a county and a city therein both impose the same taxes described in sections twelve hundred two, twelve hundred three or twelve hundred ten, the county shall have power to impose or continue to impose such taxes on the area of the county outside such city up to the maximum rate authorized therefor. In such event, the portion of the net collections received by the county by reason of its additional rate on such area, shall be allocated quarterly to the several cities and towns in such area on the basis of the ratio which the full valuation of real property in each city or town bears to the aggregate full valuation of

real property in all of the cities and towns in such area provided, however, that, in such event, in Niagara county, such portion of net collections received by Niagara county shall be allocated quarterly to the several cities and towns in such area on the basis of the ratio which the population of each city or town bears to the aggregate population of all of the cities and towns in such area, such populations determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county. The amount allocated to each town shall be applied first to reduce county taxes levied upon real property in such town and any balance remaining shall be applied to reduce general town taxes levied upon real estate; provided, however, that any town or village other than any town or village within a county having a population of one million or more and containing not more than three towns, shall have power, in the manner provided in subdivision (c) of this section, to elect to receive a direct payment of the amounts which would be so applied to reduce county taxes and general town taxes levied upon real property in such town or village. Where any village has elected to be paid directly as provided in this subdivision, the amount to be paid to such village shall be determined by the ratio that the full valuation of real property in the village or portion thereof within the town in which such village is located bears to the full valuation of real property in the entire town. If a village wholly or partially within a town has so elected to be paid directly, but the town in which such village is located has not so elected, the amount allocated to the town in which such village is wholly or partially situated shall be applied to reduce county taxes and general town taxes in the area of the town outside such village or villages. If the amount allocated to a town exceeds the amount of the county taxes and general town taxes levied upon real property in the town, the excess shall be apportioned between the town and each village, if any, wholly or partially situated therein, and paid over or applied in the manner provided in subdivision (c) of this section. The amount allocated to each city in such area shall be similarly applied to reduce county taxes levied upon real property in such city, except that if any such city except any city within a single

county having a population of one million or more and containing no more than three towns, shall so provide in the manner provided in subdivision (c) of this section, the amount which would be so applied to reduce county taxes levied upon real property in such city shall be paid directly to the city in lieu of such tax reduction. If the amount allocated to the city exceeds the amount of the county tax levied upon real property in the city, such excess shall be paid to the city.

Notwithstanding any provision of this section to the contrary, where a municipal assistance corporation has been created under article ten of the public authorities law for a city located in a county, any amount which such county allocates to such city under this subdivision shall be payable directly to such city and shall not be provided by reduction of the county tax levied upon real property in such city for so long as such municipal assistance corporation shall exist.

Any local law, ordinance or resolution enacted by a city, town or village pursuant to this subdivision shall only be effective for the calendar year or years subsequent to its enactment and, further, shall only be effective if it is mailed by registered or certified mail to the chief fiscal officer of the county in which the city, town or village is located before the first day of September preceding the calendar year for which the election is made by such local law, ordinance or resolution. Such local law, ordinance or resolution shall remain in effect for subsequent calendar years until rescinded by local law, ordinance or resolution, but the enactment shall rescind the election only if it is mailed, in the same manner already provided for in this subdivision, to the chief fiscal officer of the county in which the city, town or village is located before the first day of September preceding the calendar year for which the rescission to apply. The foregoing provisions of this paragraph notwithstanding, where a county imposes a sales and use tax to be effective on a date after the adoption of its budget but within the fiscal year for which such budget has been adopted, and the estimated revenues from such tax include net collections received by the county by reason of its additional rate on the area of the county outside a city imposing the same taxes, and such net collections have not been included in budget revenues for such

fiscal year for allocation in reduction of taxes on real property as provided in this subdivision, a local law, ordinance or resolution enacted by a city, town or village pursuant to this subdivision shall be effective as of the effective date of such tax if mailed by registered or certified mail to the chief fiscal officer of the county in which the city, town or village is located within thirty days after the enactment by the county of the local law, ordinance or resolution imposing such tax.

(2) Notwithstanding any provision of general, special or local law to the contrary, if at any time from the effective date of the Buffalo fiscal stability authority act until June thirtieth, two thousand thirty-seven any city in the county of Erie imposes sales and compensating use taxes described in section twelve hundred ten of this article, then the county of Erie shall not be required to allocate under paragraph one of this subdivision, any net collections from its taxes imposed during such period; instead it shall continue to allocate net collections from its taxes to any city in the county which does not impose such taxes and to the area of the county outside the cities, in accordance with the terms of the most current agreement among such county and the cities in the county entered into pursuant to subdivision (c) of this section.

(3) Notwithstanding any provision of general, special or local law to the contrary, if at any time from the effective date of the Erie county fiscal stability authority act until December thirty-first, two thousand thirty-nine, any city in the county of Erie imposes sales and compensating use taxes described in section twelve hundred ten of this article, then the county of Erie shall not be required to allocate under paragraph one of this subdivision any net collections from its taxes imposed during such period; instead it shall continue to allocate net collections from its taxes to any city in the county which does not impose such taxes and to the area of the county outside the cities, in accordance with the terms of the most current agreement among such county and the cities in the county entered into pursuant to subdivision (c) of this section.

(4) Notwithstanding any provision of law to the contrary, for purposes of this subdivision, a county and a city in such county shall not be deemed to impose different taxes because one makes the election

described in subdivision (m) of section eleven hundred eleven of this chapter and the other does not make such election.

(e) Where all or a portion of the net collections from a tax imposed by a county pursuant to this article is set aside for educational purposes or for allocation and distribution to the cities in the county and to the area outside the cities, or both, or where a tax or taxes are imposed pursuant to section twelve hundred four of this article for educational purposes, the portion of net collections so set aside by a county shall not be decreased or eliminated nor shall a tax so imposed by a city be eliminated unless the local law, ordinance or resolution effectuating such decrease or elimination is adopted by the county or city and written notice of such adoption is given to the school authorities of the school districts and the governing bodies of the cities, towns or villages affected thereby at least six months prior to the commencement of their respective fiscal years. The school authorities of such a school district or the governing body of such city, town or village may waive the requirement that such local law, ordinance or resolution be so adopted and such written notice given.

(f) As used in this article the following terms shall mean or include:

(1) Net collections. The moneys collected from a tax or taxes imposed pursuant to this article, after deducting therefrom expenses of administration and collection and amounts refunded or to be refunded.

(2) General Town taxes. Taxes levied for any town purpose, including highways, upon the entire area of a town.

(3) Full valuation of real property. The assessed valuation of real property divided by the equalization rate as determined in accordance with article eight of the real property tax law.

(4) Part-town activities. Activities of town government, including highway programs, which are chargeable to the area of the town outside of villages, exclusive of special district purposes, unless such special district is a fire protection district coterminous with the area of a town outside of villages.

§ 1262-a. Sales tax; Tompkins county. (a) In the event that the county of Tompkins and the city of Ithaca both impose the same taxes described in section twelve hundred two, twelve hundred three or twelve hundred

ten of this chapter, the county shall have power to impose or continue to impose such taxes on the area of the county outside such city up to the maximum rate authorized therefor. In such event, notwithstanding the provisions of the preceding section, the portion of the net collections received by the county by reason of its additional rate on such area, shall be allocated quarterly to the towns in such area in proportion to their respective populations, and allocated between the towns and villages, if any village elects to take its share in cash, in proportion to their respective populations, determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is made.

(b) Notwithstanding any other provision of law to the contrary, if the county of Tompkins imposes the additional one-half or one percent rate of tax pursuant to the provisions of section twelve hundred ten of this article, the net collections received by the county of Tompkins on account of such additional rate during the first six months such additional rate is in effect shall be retained by the county of Tompkins to be used for any county purpose. Thereafter, seventy-five per centum of net collections attributable to such additional rate shall be retained by the county of Tompkins, to be used for any county purpose, and the remaining twenty-five per centum of such net collections shall be allocated as follows:

(1) Where the city of Ithaca imposes a tax pursuant to the authority of subdivision (a) of section one thousand two hundred ten of this article, that portion received by the county on account of the additional tax imposed by the county within the city of Ithaca shall be allocated to the city of Ithaca to be used for any city purpose. Where the city of Ithaca does not impose a tax pursuant to the authority of such subdivision (a) of section one thousand two hundred ten the amount required to be allocated to such city, to be used for any city purpose, shall be determined in proportion to such city's population determined as a portion of the county's total population as determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter

for which the allocation is made.

(2) The balance of such twenty-five per centum, after deduction of the amount allocated to the city of Ithaca pursuant to paragraph one of this subdivision, shall be allocated to the towns of such county, and between towns and villages, if any village elects to take its share in cash, in the manner described in subdivision (a) of this section with respect to the area of the county outside the city of Ithaca.

*** § 1262-b. The Westchester county property tax stabilization and relief act.** Notwithstanding any other provision of law to the contrary: (a) If the county of Westchester imposes sales and compensating use taxes pursuant to subdivision (a) of section twelve hundred ten of this article at the rate of three percent:

(1) The county shall allocate one-half of net collections from such taxes imposed pursuant to subdivision (a) of section twelve hundred ten of this article countywide among the cities and towns of the county on the basis of the ratio which the full valuation of real property in each city or town bears to the aggregate full valuation of real property in all cities and towns of the county. Amounts so allocated shall be credited to each of said cities and towns against the county taxes levied upon real property in said cities and towns.

(2) The county shall allocate and credit or pay one-third of net collections from such taxes imposed pursuant to subdivision (a) of section twelve hundred ten of this article to the area of the county outside any city imposing sales and compensating use taxes at a rate of one and one-half percent or greater pursuant to the authority of subdivision (a) or at any rate pursuant to the authority of subdivision (b) of section twelve hundred ten of this article as follows:

(A) One-third of such net collections shall be allocated and credited in the manner set forth in paragraph one of this subdivision.

(B) One-sixth of such net collections shall be allocated and paid quarterly by the county commissioner of finance, in cash, to the several school districts in such area of the county outside any such city imposing sales and compensating use taxes. Such allocation and payment, to such several school districts, shall be made on the basis of the ratio which the population of each such school district bears to the

aggregate population of all of the school districts in such area. In the case of school districts which are partially within and partially without the county, or partially within or partially without the area of the county outside a city imposing sales and compensating use taxes, the allocation and payment to each such school district shall be made on the basis of the population in such school district in the county, or in such area of the county outside a city imposing sales and compensating use taxes, as the case may be. Such populations shall be determined in accordance with the latest federal census or special population census under section twenty of the general municipal law completed and published prior to the end of the quarter in which such allocation and payment are made, which special population census shall include the entire area of the county; provided that such special population census shall not be taken more than once in every two years. A school district split between Westchester county and another county shall apply such allocation and payment solely to the benefit of the residents of the county in which the sales and compensating use taxes are imposed.

(C) One-half of such net collections shall be allocated and paid quarterly by the county commissioner of finance, in cash, to the cities not imposing sales and compensating use taxes and to the towns and villages on which such rate is imposed, on the basis of the ratio which the population of each such city, town or village on which such rate is imposed bears to the entire population of all such cities, towns and villages in the area on which such rate is imposed. Such populations shall be determined in accordance with the latest federal census or special population census under section twenty of the general municipal law completed and published prior to the end of the quarter in which such allocation is made, which special population census shall include the entire area of the county; provided that such special population census shall not be taken more than once in every two years.

(D) The quarterly allocation and payment of cash to cities, towns, villages and school districts provided for under this paragraph and under paragraph three of this subdivision and under subdivision (b) of this section may be made after payment by the state comptroller to the county of the net collections subject to such allocation and receipt by the county commissioner of finance of the quarterly settlement report issued by the department, and may include adjustments for corrections

applicable to such allocations. All ratios established by the county commissioner of finance with respect to allocations to cities, towns, villages and school districts under this subdivision and under subdivision (b) of this section shall be carried to four decimal places. The allocation of net collections and payment of cash provided for under this paragraph and under paragraph three of this subdivision and under subdivision (b) of this section shall be made to a town based upon the population of the town less the population of any village therein, provided that a town/village or village/town shall be deemed a village for the purpose of determining such allocation. The allocation of net collections and payment of cash provided for under this paragraph and under paragraph three of this subdivision and under subdivision (b) of this section shall be applied by the cities, towns, villages and school districts receiving such allocation and payment as a credit against the taxes upon real property imposed by such municipalities and school districts, respectively. The allocation and payment received by towns shall be credited against real property taxes in either the general fund town-wide or the town outside village fund or a combination thereof.

(3) The county shall allocate and credit or pay one-sixth of net collections from such taxes imposed pursuant to subdivision (a) of section twelve hundred ten of this article to the area of the county outside any city imposing sales and compensating use taxes at a rate of one and one-half percent or greater pursuant to the authority of subdivision (a) or at any rate pursuant to the authority of subdivision (b) of section twelve hundred ten of this article as follows:

(A) Seventy percent of such net collections shall be retained by the county to be used for any county purpose.

(B) Ten percent of such net collections shall be allocated and paid in the manner set forth in subparagraph (B) of paragraph two of this subdivision.

(C) Twenty percent of such net collections shall be allocated and paid in the manner set forth in subparagraph (C) of paragraph two of this subdivision.

(b) If the county of Westchester imposes the additional one percent rate of sales and compensating use tax authorized by clause forty-two of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article, the county shall allocate and credit or pay net

collections from such additional one percent rate in the manner set forth in paragraph three of subdivision (a) of this section with respect to the area of the county outside any city imposing sales and compensating use taxes at a rate of one and one-half percent or greater pursuant to the authority of subdivision (a) of section twelve hundred ten of this article or at any rate pursuant to the authority of subdivision (b) of section twelve hundred ten of this article.

(c) Nothing in this section shall be construed to impair the powers of a city currently imposing sales and compensating use taxes pursuant to the authority of section twelve hundred ten of this article from continuing to do so in accordance with law. No school district in any city imposing such sales and compensating use taxes shall be entitled to receive a cash allocation and payment under paragraph two or three of subdivision (a) or under subdivision (b) of this section. No city, town or village authorized or entitled to receive an allocation under subparagraph (C) of paragraph two or subparagraph (C) of paragraph three of subdivision (a) or under subdivision (b) of this section shall be authorized or entitled to receive any cash allocation under section twelve hundred sixty-two of this article.

* NB Expires November 30, 2027

§ 1262-c. Allocation of revenue from sales and use taxes to villages wholly or partially contained within Broome county. Notwithstanding any other provision of the tax law to the contrary, the county legislature of Broome county shall have the authority to adopt a method for dividing the sales and use tax revenues allocated to a town between any village or villages located wholly or partially within the town and to the area outside of villages based on either population or full valuation of real property or on any combination of these two factors.

§ 1262-d. Allocation and distribution of revenues from sales and use taxes to villages within the county of Albany. Notwithstanding any other provision of this chapter to the contrary, the net collections from a tax imposed by Albany county pursuant to this article set aside for allocation and distribution to the towns and villages therein shall be

distributed between such towns and villages where any such village has elected or hereafter elects to take its share in cash, directly in proportion to their respective populations determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county, except that in the towns of Colonie and Coeymans, the amount to be paid to each village therein shall be determined by the ratio that the full valuation of real property in each such village within said town bears to the full valuation of real property in the entire town as set forth in subdivision (c) of section twelve hundred sixty-two of this chapter; provided, however, that commencing with the July, nineteen hundred eighty-one quarterly distribution, one-eighth of the amount of such net collections allocated to the town of Colonie and each successive quarter thereafter, cumulatively, an additional one-eighth part of each such quarterly town allocation shall be distributed between such village or villages and the town of Colonie in proportion to their respective full valuations of real property, with the remainder of each such town quarterly allocation through and including that distributable in January, nineteen hundred eighty-three, being an evenly declining portion of each such quarterly allocation, to be distributed in proportion to population as hereinbefore set forth for the remainder of Albany county, so that the April, nineteen hundred eighty-three quarterly allocation to the town of Colonie and those allocations thereafter received shall be divided between said town and the villages therein solely in proportion to their respective full valuations of real property as provided herein.

§ 1262-e. Establishment of local government assistance programs in Nassau county. 1. Towns and cities. Notwithstanding any other provision of law to the contrary, for the calendar year beginning on January first, nineteen hundred ninety-eight and continuing through the calendar year beginning on January first, two thousand twenty-seven, the county of Nassau shall enact and establish a local government assistance program for the towns and cities within such county to assist such towns

and cities to minimize real property taxes; defray the cost and expense of the treatment, collection, management, disposal, and transportation of municipal solid waste, and to comply with the provisions of chapter two hundred ninety-nine of the laws of nineteen hundred eighty-three; and defray the cost of maintaining conservation and environmental control programs. Such special assistance program for the towns and cities within such county and the funding for such program shall equal one-third of the revenues received by such county from the imposition of the three-quarters percent sales and use tax during calendar years two thousand one, two thousand two, two thousand three, two thousand four, two thousand five, two thousand six, two thousand seven, two thousand eight, two thousand nine, two thousand ten, two thousand eleven, two thousand twelve, two thousand thirteen, two thousand fourteen, two thousand fifteen, two thousand sixteen, two thousand seventeen, two thousand eighteen, two thousand nineteen, two thousand twenty, two thousand twenty-one, two thousand twenty-two, two thousand twenty-three, two thousand twenty-four, two thousand twenty-five, two thousand twenty-six and two thousand twenty-seven additional to the regular three percent rate authorized for such county in section twelve hundred ten of this article. The monies for such special local assistance shall be paid and distributed to the towns and cities on a per capita basis using the population figures in the latest decennial federal census. Provided further, that notwithstanding any other law to the contrary, the establishment of such special assistance program shall preclude any city or town within such county from preempting or claiming under any other section of this chapter the revenues derived from the additional tax authorized by section twelve hundred ten of this article. Provided further, that any such town or towns may, by resolution of the town board, apportion all or a part of monies received in such special assistance program to an improvement district or special district account within such town or towns in order to accomplish the purposes of this special assistance program.

2. Villages. Notwithstanding any other provision of law to the contrary, for the calendar year beginning on January first, nineteen hundred ninety-eight and continuing through the calendar year beginning on January first, two thousand twenty-seven, the county of Nassau, by

local law, is hereby empowered to enact and establish a local government assistance program for the villages within such county to assist such villages to minimize real property taxes; defray the cost and expense of the treatment, collection, management, disposal, and transportation of municipal solid waste; and defray the cost of maintaining conservation and environmental control programs. The funding of such local assistance program for the villages within such county may be provided by Nassau county during any calendar year in which such village local assistance program is in effect and shall not exceed one-sixth of the revenues received from the imposition of the three-quarters percent sales and use tax that are remaining after the towns and cities have received their funding pursuant to the provisions of subdivision one of this section. The funding for such village local assistance program shall be paid and distributed to the villages on a per capita basis using the population figures in the latest decennial federal census. Provided further, that the establishment of such village local assistance program shall preclude any village within such county from preempting or claiming under any other section of this chapter the revenues derived from the additional tax authorized by section twelve hundred ten of this article.

§ 1262-f. Allocation and distribution of revenues from sales and use taxes within the village of Barker and town of Somerset, Niagara county. Notwithstanding any other provision of this chapter to the contrary, the net collections from a tax imposed by Niagara county pursuant to this article set aside for allocation and distribution to the town of Somerset and village of Barker shall be distributed between such town and village which has elected or hereafter elects to take its share in cash, directly in proportion to their respective populations determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county.

*** § 1262-g. The Monroe county sales tax adjustment act. 1.** As used in

this section, the following terms shall mean:

(a) Annual fiscal year. A twelve-month time period which begins on July first and ends June thirtieth of the following year. The first annual fiscal year shall begin on July first, nineteen hundred ninety-one and end on June thirtieth, nineteen hundred ninety-two.

(b) Sales tax revenue. The net amount of sales and compensating use taxes collected by the state of New York during an annual fiscal year and thereafter distributed to the county of Monroe.

(c) Sales tax increase. That amount by which sales tax revenue for an annual fiscal year exceeds the amount of sales tax revenue for the immediately preceding annual fiscal year.

(d) Sales tax decrease. That amount by which sales tax revenue for an annual fiscal year is less than the amount of sales tax revenue for the immediately preceding annual fiscal year.

2. Notwithstanding any other provisions of law to the contrary, on and after July first, nineteen hundred ninety-two, the county of Monroe shall allocate sales tax increases as follows:

(a) In the event there is a sales tax increase during any annual fiscal year, beginning on July first, nineteen hundred ninety-two or thereafter, subject to the provisions of paragraph (b) of this subdivision:

(i) fifty percent of such sales tax increase shall be allocated to the city of Rochester, subject, however, to the limitation set forth in subparagraph (iv) of this paragraph; and

(ii) fifty percent of the sales tax increase shall be allocated pursuant to section twelve hundred sixty-two of this article, subject however, to the exceptions hereinafter set forth in clauses (A) and (B) of this subparagraph:

(A) The amounts allocated to the school districts outside the city of Rochester shall be equal to the amount of money which would have been received by those districts from said sales tax increase prior to the application of this section, which increased funds for those school districts shall be deducted from that portion of the sales tax increase allocated to the county of Monroe; and

(B) The amounts allocated to all of the villages located within the county of Monroe shall be equal to the amount of money which would have

been received by those villages from said sales tax increase prior to the application of this section, which increased funds for those villages shall be deducted from that portion of the sales tax increase allocated to the county of Monroe; and

(iii) The remainder of the sales tax revenue shall be allocated in accordance with the same allocation that was made during the immediately preceding annual fiscal year; and

(iv) At no time during an annual fiscal year shall the amount of sales tax revenue allocated to the city of Rochester pursuant to the provisions of this section and section twelve hundred sixty-two of this article exceed thirty-five and sixty-three one hundredths percent of the total sales tax revenue. Any sales tax revenue that would have been otherwise allocated to the city of Rochester shall be allocated in accordance with section twelve hundred sixty-two of this article except that none of the additional sales tax revenue shall be allocated to the city of Rochester.

(b) In the event that there is a sales tax decrease during any annual fiscal year, beginning on July first, nineteen hundred ninety-two or thereafter:

(i) The amount of the sales tax decrease shall be borne by the county of Monroe, city of Rochester and the area in the county of Monroe outside the city of Rochester in the same proportion in which the preceding year's overall allocations were made;

(ii) in the first annual fiscal year, or, if necessary, years following the annual fiscal year, or years, of sales tax decrease, during which there is a sales tax increase, an amount equal to the total sales tax decrease shall be subtracted from the sales tax increase and such amount shall be allocated to the county of Monroe, the city of Rochester and the area in the county of Monroe outside the city of Rochester in the same amounts as subtracted in the sales tax decrease year;

(iii) the remainder of the sales tax increase, if any, shall be allocated on the same basis as set forth in paragraph (a) of this subdivision; and

(iv) the remainder of the sales tax revenue shall be allocated in accordance with the same allocation that was made during the immediately preceding annual fiscal year.

(c) The allocation required by this section for an annual fiscal year shall be made during such year at the same time that allocation is made for sales tax revenue apportioned pursuant to section twelve hundred sixty-two of this article.

3. The provisions of this section shall terminate if a payroll tax or income tax is enacted for the city of Rochester on the same date that such payroll tax or income tax becomes effective, and the sales tax increase allocation pursuant to this section shall not be utilized after such date.

* NB There are 2 § 1262-g's

*** § 1262-g. Oneida county allocation and distribution of net collections from the additional one percent rate of sales and compensating use taxes.** Notwithstanding any contrary provision of law, if the county of Oneida imposes sales and compensating use taxes at a rate which is one percent additional to the three percent rate authorized by section twelve hundred ten of this article, as authorized by such section, (a) where a city in such county imposes tax pursuant to the authority of subdivision (a) of such section twelve hundred ten, such county shall allocate, distribute and pay in cash quarterly to such city one-half of the net collections attributable to such additional one percent rate of the county's taxes collected in such city's boundaries; (b) where a city in such county does not impose tax pursuant to the authority of such subdivision (a) of such section twelve hundred ten, such county shall allocate, distribute and pay in cash quarterly to such city not so imposing tax a portion of the net collections attributable to one-half of the county's additional one percent rate of tax calculated on the basis of the ratio which such city's population bears to the county's total population, such populations as determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county; and (c) provided, however, that such county shall dedicate the first one million five hundred thousand dollars of

net collections attributable to such additional one percent rate of tax received by such county after the county receives in the aggregate eighteen million five hundred thousand dollars of net collections from such additional one percent rate of tax imposed for any of the periods: September first, two thousand twelve through August thirty-first, two thousand thirteen; September first, two thousand thirteen through August thirty-first, two thousand fourteen; and September first, two thousand fourteen through August thirty-first, two thousand fifteen; September first, two thousand fifteen through August thirty-first, two thousand sixteen; and September first, two thousand sixteen through August thirty-first, two thousand seventeen; September first, two thousand seventeen through August thirty-first, two thousand eighteen; September first, two thousand eighteen through August thirty-first, two thousand twenty; September first, two thousand twenty through August thirty-first, two thousand twenty-three; September first, two thousand twenty-three through August thirty-first, two thousand twenty-five; and September first, two thousand twenty-five through August thirty-first, two thousand twenty-seven, to an allocation on a per capita basis, utilizing figures from the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the year for which such allocation is made, which special census must include the entire area of such county, to be allocated and distributed among the towns of Oneida county by appropriation of its board of legislators; provided, further, that nothing herein shall require such board of legislators to make any such appropriation until it has been notified by any town by appropriate resolution and, in any case where there is a village wholly or partly located within a town, a resolution of every such village, embodying the agreement of such town and village or villages upon the amount of such appropriation to be distributed to such village or villages out of the allocation to the town or towns in which it is located.

* NB There are 2 § 1262-g's

§ 1262-h. Allocation and distribution of net collections from the additional one percent rate of sales and compensating use taxes in

Steuben county. Notwithstanding any provision of law to the contrary, of the net collections received by the county of Steuben as a result of the imposition of the additional one percent rate of tax authorized by section twelve hundred ten of this article (a) during the period beginning December first, nineteen hundred ninety-three and ending November thirtieth, nineteen hundred ninety-four, the county of Steuben shall pay or cause to be paid to the city of Hornell the sum of two hundred thousand dollars, to the city of Corning the sum of three hundred thousand dollars, and the sum of five hundred thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area. Of the net collections received by the county of Steuben as a result of the imposition of said additional one percent rate of tax authorized by section twelve hundred ten of this article during the period beginning December first, nineteen hundred ninety-four and ending November thirtieth, nineteen hundred ninety-five, the county of Steuben shall pay or cause to be paid to the city of Hornell the sum of three hundred thousand dollars, to the city of Corning the sum of four hundred fifty thousand dollars, and the sum of seven hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and (b) during the period beginning December first, nineteen hundred ninety-five and ending November thirtieth, two thousand seven, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of five hundred fifty thousand dollars, to the city of Corning the sum of six hundred thousand dollars, and the sum of seven hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand seven and ending November thirtieth, two thousand nine, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of six hundred ten thousand dollars, to the city of Corning the sum of six

hundred fifty thousand dollars, and the sum of seven hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand nine and ending November thirtieth, two thousand eleven, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of seven hundred ten thousand dollars, to the city of Corning the sum of seven hundred ten thousand dollars, and the sum of seven hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand eleven and ending November thirtieth, two thousand thirteen, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of seven hundred forty thousand dollars, to the city of Corning the sum of seven hundred forty thousand dollars, and the sum of seven hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand thirteen and ending November thirtieth, two thousand fifteen, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of seven hundred sixty-five thousand dollars, to the city of Corning the sum of seven hundred sixty-five thousand dollars, and the sum of seven hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand fifteen and ending November thirtieth, two thousand seventeen, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of seven hundred sixty-five thousand dollars, to the city of Corning the sum of seven hundred sixty-five thousand dollars, and the sum of seven hundred fifty thousand

dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand seventeen and ending November thirtieth, two thousand twenty, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of seven hundred eighty thousand dollars, to the city of Corning the sum of seven hundred eighty thousand dollars, and the sum of seven hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand twenty and ending November thirtieth, two thousand twenty-three, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of eight hundred twenty thousand dollars, to the city of Corning the sum of eight hundred twenty thousand dollars, and the sum of seven hundred ninety thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand twenty-three and ending November thirtieth, two thousand twenty-five, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of eight hundred fifty thousand dollars, to the city of Corning the sum of eight hundred fifty thousand dollars, and the sum of eight hundred fifty thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area; and during the period beginning December first, two thousand twenty-five and ending November thirtieth, two thousand twenty-seven, the county of Steuben shall annually pay or cause to be paid to the city of Hornell the sum of nine hundred thousand dollars, to the city of Corning the sum of nine hundred thousand dollars, and the sum of nine hundred thousand dollars to the towns and villages of the county of Steuben, on the basis of the ratio which the

full valuation of real property in each town or village bears to the aggregate full valuation of real property in all of the towns and villages in such area.

§ 1262-i. Allocation of net collections from the additional one percent rate of sales and compensating use taxes in the county of Tioga. Notwithstanding any contrary provision of law, one-half of the net collections received by the county of Tioga from the one percent sales and compensating use taxes in addition to the three percent rate, each as authorized by section twelve hundred ten of this article, shall be deposited in the general fund of such county and one-half of such collections shall be deposited by the county of Tioga in a capital reserves fund. Disbursements from such capital reserves fund shall solely be made for the purposes of capital projects and repaying any debts incurred for such capital projects in the county of Tioga.

§ 1262-j. Allocation and distribution of net collections from the additional sales and compensating use taxes in Suffolk county. (a) Notwithstanding any provision of law to the contrary, of the net collections received by the county of Suffolk as a result of the imposition of up to the additional one percent rate of tax authorized by section twelve hundred ten of this chapter during the period beginning January first, nineteen hundred ninety-four and ending December thirty-first, nineteen hundred ninety-five, the county of Suffolk shall allocate such net collections as follows: one-eighth of the net collections received shall be dedicated for public safety purposes; an appropriate amount shall be used to bring the maximum funds dedicated to the sewer stabilization fund to twelve million five hundred thousand dollars annually; and, the balance shall be deposited in the general fund of the county of Suffolk.

(b) Notwithstanding any provision of law to the contrary, of the net collections received by the county of Suffolk as a result of the increase of three-quarters of one percent to the tax authorized by section twelve hundred ten of this article for the period beginning January first, nineteen hundred ninety-six and ending May thirty-first,

two thousand one, imposed by local laws or resolutions (by simple majority) by the county legislature, and signed by the county executive, the county of Suffolk shall allocate such net collections as follows: an amount equal to no less than one-eighth and no more than one-quarter of net collections which would be received from the imposition of a full one percent rate increase, shall be dedicated for public safety purposes and the balance shall be deposited in the general fund of the county of Suffolk.

(c) Notwithstanding any provision of law to the contrary, of the net collections received by the county of Suffolk as a result of the increase of one percent to the tax authorized by section twelve hundred ten of this article for the period beginning June first, two thousand one and ending November thirtieth, two thousand twenty-seven, imposed by local laws or resolutions (by simple majority) by the county legislature, and signed by the county executive, the county of Suffolk shall allocate such net collections as follows: no less than one-eighth and no more than three-eighths of such net collections received shall be dedicated for public safety purposes and the balance shall be deposited in the general fund of the county of Suffolk.

§ 1262-k. Allocation and distribution of net collections in Oswego county. Notwithstanding the contrary provisions of subdivision (c) or (d) of section twelve hundred sixty-two of this article:

(a) Where a city in the county of Oswego exercises its prior right to impose all of the taxes described in article twenty-eight of this chapter as authorized by subdivision (a) of section twelve hundred ten or section twelve hundred eleven of this article at a rate greater than one and one-half percent, and the county of Oswego also imposes such taxes and allocates amounts not set aside for county purposes or educational purposes to the cities and the area in the county outside the cities, the county of Oswego shall reduce the amount otherwise required to be allocated to such city under subdivision (c) of section twelve hundred sixty-two of this article by one-third of such amount for each one-half percent that such city's tax rate exceeds one and one-half percent.

(b) Where a city in the county of Oswego exercises its prior right to

impose all of the taxes described in article twenty-eight of this chapter as authorized by subdivision (a) of section twelve hundred ten or section twelve hundred eleven of this article at a rate greater than one and one-half percent and the county imposes such taxes at a rate greater than one and one-half percent, the county's additional rate on the area of the county outside such city described in subdivision (d) of section twelve hundred sixty-two of this article shall be deemed to be one and one-half percent and the portion of net collections that such county would otherwise be required to allocate under subdivision (d) of section twelve hundred sixty-two of this article by reason of such deemed additional rate shall be reduced by one-third for each one-half percent that such city's tax rate exceeds one and one-half percent. Such portion shall be allocated quarterly to the several cities and towns in such area on the basis of the ratio that the population of each city or town bears to the entire population of all of the cities and towns in such area, such populations as determined in accordance with subdivision (c) of section twelve hundred sixty-two of this article.

(c) Where any village in the county of Oswego has elected to be paid directly as provided in subdivision (c) or (d) of section twelve hundred sixty-two of this article, the amount to be paid to such village shall be determined by the ratio that the population of such village or portion thereof within the town in which such village is located bears to the entire population of such town, such population as determined in accordance with such subdivision (c).

(d) Subdivisions (a) and (b) of this section shall apply only with respect to taxes imposed at a rate not to exceed three percent by the county of Oswego and by any city in such county and without regard to any additional rate of tax that such county or any such city may be authorized to or does impose.

§ 1262-1. Allocation and distribution of net collections from the additional rate of sales and compensating use tax in Rockland county. 1. Notwithstanding any provision of law to the contrary, if the county of Rockland imposes the additional five-eighths of one percent rate of tax authorized by section twelve hundred ten of this article during the period beginning March first, two thousand two, and ending November

thirtieth, two thousand twenty-seven, such county shall allocate and distribute twenty percent of the net collections from such additional rate to the towns and villages in the county in accordance with subdivision (c) of section twelve hundred sixty-two of this part on the basis of the ratio which the population of each such town or village bears to such county's total population; and

2. Notwithstanding any provision of law to the contrary, if the county of Rockland imposes the additional three-eighths of one percent rate of tax authorized by section twelve hundred ten of this article during the period beginning March first, two thousand seven, and ending November thirtieth, two thousand twenty-seven, such county shall allocate and distribute sixteen and two-thirds percent of the net collections from such additional rate to the general funds of towns and villages within the county of Rockland with existing town and village police departments from March first, two thousand seven through December thirty-first, two thousand seven and thirty-three and one-third percent of the net collections from such additional rate from January first, two thousand eight through November thirtieth, two thousand twenty-seven. The monies allocated and distributed pursuant to this subdivision shall be allocated and distributed to towns and villages with police departments on the basis of the number of full-time equivalent police officers employed by each police department and shall not be used for salaries heretofore or hereafter negotiated.

*** § 1262-1. Allocation and distribution of certain net collections in Warren county.** (a) If the county of Warren enters into an agreement pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this article with the city of Glens Falls to allocate and distribute a portion of net collections due the county from its taxes imposed pursuant to the authority of subdivision (a) of section twelve hundred ten of this article, the agreement may be for a term not exceeding forty years and the state comptroller shall not disapprove such agreement based on the length of its term, provided that such term shall not exceed forty years.

(b) Notwithstanding any contrary provision of this article or of any

agreement between the city of Glens Falls and the county of Warren pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this article, if at any time the board of supervisors of Warren county shall pledge all or a portion of net collections from sales and compensating use taxes imposed by such county as described in section twelve hundred sixty-one-a of this article, any obligation of the county of Warren to allocate and distribute net collections to the city of Glens Falls under any such agreement between such city and such county shall be satisfied if the amounts due such city under such agreement are instead paid by such county from moneys returned to such county each month by the Warren and Washington county industrial development agency or trustee, as the case may be, as provided in such section twelve hundred sixty-one-a; or, in the event such moneys so returned to such county are insufficient in any month to allow such county to pay to such city the amounts required under such agreement, such county shall make such payments to such city in the amounts and in the manner set forth in such agreement.

* NB There are 2 § 1262-l's

*** § 1262-m. Allocation of net collections from the additional one percent rate of sales and compensating use taxes in the county of Chenango.** Notwithstanding any contrary provision of law, all net collections received by the county of Chenango from the one percent sales and compensating use taxes in addition to the three percent rate, each as authorized by section twelve hundred ten of this article, shall be used, in the first instance, to pay the cost of constructing and repaying any debts incurred in the construction of the Chenango county public safety building project, and any operational costs related to the Chenango county public safety building. Any and all revenue derived from such additional one percent tax, after the construction and debt financing costs of the Chenango county public safety building project annex, and any operational costs related to the Chenango county public safety building are paid, shall be deposited by the county of Chenango in a capital reserves fund. Disbursements from such capital reserves fund shall solely be made for the purposes of capital projects and repaying any debts incurred for such capital projects in the county of

Chenango.

* NB There are 2 § 1262-m's

*** § 1262-m. Allocation and distribution of net collections in Saratoga county.** Notwithstanding any other provision of law to the contrary:

(a) If Saratoga county imposes sales and compensating use taxes pursuant to the authority of subdivision (a) of section twelve hundred ten of this article, the local legislative body of Saratoga county shall be authorized and empowered to adopt and amend local laws, ordinances or resolutions to allocate and distribute to the town of Milton up to sixty thousand dollars per calendar year, from net collections received by the county from such taxes; and any such amount allocated and distributed to the town of Milton pursuant to this subdivision shall be in addition to any amounts allocated and applied or distributed by such county to such town pursuant to the authority of subdivision (c) or (d), or both subdivisions (c) and (d), of section twelve hundred sixty-two of this article.

(b) If Saratoga county and the city of Saratoga Springs each impose sales and compensating use taxes pursuant to the authority of subdivision (a) of section twelve hundred ten of this article and the city of Mechanicville does not impose any taxes pursuant to the authority of such section twelve hundred ten, the local legislative body of Saratoga county shall be authorized and empowered to adopt and amend local laws, ordinances or resolutions to allocate and distribute to the city of Mechanicville up to five hundred forty-two thousand dollars per calendar year, from net collections received by the county from its sales and compensating use taxes imposed pursuant to the authority of such section twelve hundred ten; and any such amount allocated and distributed to the city of Mechanicville pursuant to this subdivision shall be in addition to any amounts allocated and applied or distributed by such county to such city pursuant to the authority of subdivision (c) or (d), or both subdivisions (c) and (d), of section twelve hundred sixty-two of this article.

* NB There are 2 § 1262-m's

§ 1262-n. Disposition of net collections from the additional one percent rate of sales and compensating use taxes in the county of Niagara. Notwithstanding any contrary provision of law, if the county of Niagara imposes the additional one percent rate of sales and compensating use taxes authorized by section twelve hundred ten of this article for all or any portion of the period beginning March first, two thousand three and ending November thirtieth, two thousand twenty-three, the county shall use all net collections from such additional one percent rate to pay the county's expenses for Medicaid. The net collections from the additional one percent rate imposed pursuant to this section shall be deposited in a special fund to be created by such county separate and apart from any other funds and accounts of the county. Any and all remaining net collections from such additional one percent tax, after the Medicaid expenses are paid, shall be deposited by the county of Niagara in the general fund of such county for any county purpose.

§ 1262-o. Disposition of net collections from the additional rate of sales and compensating use taxes in the county of Chautauqua. Notwithstanding any contrary provision of law, if the county of Chautauqua imposes the additional one and one-quarter percent rate of sales and compensating use taxes authorized by section twelve hundred ten of this article for all or any portion of the period beginning March first, two thousand five and ending August thirty-first, two thousand six, the additional one percent rate authorized by such section for all or any of the period beginning September first, two thousand six and ending November thirtieth, two thousand seven, the additional three-quarters of one percent rate authorized by such section for all or any of the period beginning December first, two thousand seven and ending November thirtieth, two thousand ten, the county shall allocate one-fifth of the net collections from the additional three-quarters of one percent to the cities, towns and villages in the county on the basis of their respective populations, determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is

made, and allocate the remainder of the net collections from the additional three-quarters of one percent as follows: (1) to pay the county's expenses for Medicaid and other expenses required by law; (2) to pay for local road and bridge projects; (3) for the purposes of capital projects and repaying any debts incurred for such capital projects in the county of Chautauqua that are not otherwise paid for by revenue received from the mortgage recording tax; and (4) for deposit into a reserve fund for bonded indebtedness established pursuant to the general municipal law. Notwithstanding any contrary provision of law, if the county of Chautauqua imposes the additional one-half percent rate of sales and compensating use taxes authorized by such section twelve hundred ten for all or any of the period beginning December first, two thousand ten and ending November thirtieth, two thousand fifteen, the county shall allocate three-tenths of the net collections from the additional one-half of one percent to the cities, towns and villages in the county on the basis of their respective populations, determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law completed and published prior to the end of the quarter for which the allocation is made, and allocate the remainder of the net collections from the additional one-half of one percent as follows: (1) to pay the county's expenses for Medicaid and other expenses required by law; (2) to pay for local road and bridge projects; (3) for the purposes of capital projects and repaying any debts incurred for such capital projects in the county of Chautauqua that are not otherwise paid for by revenue received from the mortgage recording tax; and (4) for deposit into a reserve fund for bonded indebtedness established pursuant to the general municipal law. Notwithstanding any contrary provision of law, if the county of Chautauqua imposes the additional one percent rate of sales and compensating use taxes authorized by such section twelve hundred ten for all or any of the period beginning December first, two thousand fifteen and ending November thirtieth, two thousand twenty-seven, the county shall allocate three-twentieths of the net collections from the additional one percent to the cities, towns and villages in the county on the basis of their respective populations, determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the

general municipal law completed and published prior to the end of the quarter for which the allocation is made, and allocate the remainder of the net collections from the additional one percent as follows: (1) to pay the county's expenses for Medicaid and other expenses required by law; (2) to pay for local road and bridge projects; (3) for the purposes of capital projects and repaying any debts incurred for such capital projects in the county of Chautauqua that are not otherwise paid for by revenue received from the mortgage recording tax; and (4) for deposit into a reserve fund for bonded indebtedness established pursuant to the general municipal law. The net collections from the additional rates imposed pursuant to this section shall be deposited in a special fund to be created by such county separate and apart from any other funds and accounts of the county to be used for purposes above described.

§ 1262-p. Disposition of net collections from the additional one percent rate of sales and compensating use taxes in the county of Livingston. Notwithstanding any contrary provision of law, if the county of Livingston imposes the additional one percent rate of sales and compensating use taxes authorized by section twelve hundred ten of this article for all or any portion of the period beginning June first, two thousand three and ending November thirtieth, two thousand twenty-seven, the county shall use all net collections from such additional one percent rate to pay the county's expenses for Medicaid. The net collections from the additional one percent rate imposed pursuant to this section shall be deposited in a special fund to be created by such county separate and apart from any other funds and accounts of the county. Any and all remaining net collections from such additional one percent tax, after the Medicaid expenses are paid, shall be deposited by the county of Livingston in the general fund of such county for any county purpose.

§ 1262-q. Erie county-disposition of net collections from the one percent and the three-quarters of one percent rates of sales and compensating use taxes in excess of three percent. Notwithstanding any provision of law to the contrary: (1) If the county of Erie imposes the

additional one percent rate of sales and compensating use taxes authorized by item (i) of clause (4) of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article during the period beginning January first, two thousand seven, or thereafter, the county shall allocate each calendar year the first twelve million five hundred thousand dollars of the net collections from such one percent rate to the cities of such county and the area in such county outside its cities to be applied or distributed in the same manner and proportion as the net collections for such cities and area are applied or distributed under the revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this part in effect on January first, two thousand six, and subject to all provisions of such agreement governing the net collections for such cities and area and shall retain the remainder of such net collections for any county purpose.

(2) Net collections from the additional three-quarters of one percent rate of sales and compensating use taxes which the county may impose during the period commencing December first, two thousand eleven, and ending November thirtieth, two thousand twenty-seven, pursuant to the authority of item (ii) of clause (4) of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article shall be used by the county solely for county purposes and shall not be subject to any revenue distribution agreement the county entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this part.

*** § 1262-r. Allocation and distribution of certain net collections in the county of Oswego.** Notwithstanding any other provision of law to the contrary, if the city of Fulton does not impose any tax pursuant to the authority of section twelve hundred ten of this article: (1) the county of Oswego shall impose sales and compensating use taxes pursuant to the authority of subdivision (a) of section twelve hundred ten of this article at the maximum rate authorized therefor; (2) such county shall, by local law, ordinance or resolution, allocate and distribute monthly to the city of Fulton net collections in the amount of five hundred eight thousand eight hundred twenty dollars, commencing on the first day

of the first month in which the repeal of such city's taxes takes effect, and continuing monthly unless the city of Fulton imposes tax pursuant to the authority of such section twelve hundred ten; (3) such monthly amount allocated and distributed to such city shall be deemed to be paid from the county's net collections set aside for county purposes and shall not affect the amount of net collections to be allocated and distributed by the county to the area of the county outside the cities in the county pursuant to subdivision (c) of section twelve hundred sixty-two of this part; and (4) such county shall not be required to allocate net collections to the city of Fulton pursuant to subdivision (c) of such section twelve hundred sixty-two unless net collections from the county's sales and compensating use taxes exceed thirty-four million dollars per year, in which case the county shall allocate ten percent of its net collections in excess of thirty-four million dollars on the basis of population to the city of Fulton and such area of the county outside the cities.

* NB There are 2 § 1262-r's

*** § 1262-r. Disposition of net collections from sales and compensating use taxes imposed by the county of Ontario.** Notwithstanding the provisions of subdivision (c) of section twelve hundred sixty-two of this part to the contrary, if the cities of Canandaigua and Geneva in the county of Ontario do not impose sales and compensating use taxes pursuant to the authority of section twelve hundred ten of this article and such cities and county enter into an agreement pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this part to be effective March first, two thousand six, such agreement may provide that:

(a) The term of such agreement may be indefinite, with an initial period of ten years.

(b) The county shall allocate net collections from its taxes imposed at the rate of one and one-half percent pursuant to the authority of section twelve hundred ten of this article and also from an additional one-eighth of one percent rate of such taxes authorized by such section twelve hundred ten during the entire period in which such additional rate is authorized to the cities, towns and villages in the county (i)

on the basis of their respective populations, determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county (the "population method"), or (ii) on the basis of the ratio which the full valuation of real property in each city, town and village bears to the aggregate full valuation of real property in all of the cities, towns and villages in such county (the "full valuation method"), or (iii) on the basis of the two thousand four base amounts described in subdivision (d) of this section, or (iv) on the basis of specific amounts set aside for each city in the county, or (v) on the basis of a combination of such methods, provided, that the county shall apply the population method and the full valuation method uniformly throughout the county.

(c) "Full valuation of real property" may, as an alternative to the definition of such term in subdivision (f) of section twelve hundred sixty-two of this article, be defined to mean the total assessed valuation of real property, including property wholly exempt from taxation, divided by the equalization rate as determined in accordance with article eight of the real property tax law, provided that the county shall apply either such definition uniformly countywide.

(d) The two thousand four base amounts shall mean, in the case of a city, the total amount of net collections the city received from its sales and compensating use taxes in calendar year two thousand four, and, in the case of a town or village, the total amount of net collections that the county allocated to the town or village in calendar year two thousand four.

(e) To the extent that the county uses the full valuation method to determine the amounts of allocations and distributions to be made to the cities, towns and villages, for allocations and distributions to be made in calendar years two thousand six and two thousand seven, the county shall use the final assessment rolls of the cities and towns in the county completed and filed in two thousand four; and, for allocations and distributions to be made in each calendar year of the agreement after two thousand seven, the county shall use the final assessment rolls completed and filed by such cities and towns in the immediately

preceding calendar year.

(f) In addition to other payments to be made under the agreement to the two cities in the county, the county may pay amounts to such cities with respect to the months of March and April, two thousand six, to reflect that such cities repealed their sales and compensating use taxes effective March first, two thousand six, in exchange for entering into the agreement with the county.

(g) A review board consisting of the county's director of real property services and two other persons selected by such director and confirmed by the county board of supervisors may adjust the full value of any parcel of wholly exempt real property in the county solely for the purpose of determining the allocations to be made under such agreement. A city, town or village which disagrees with such review board over the adjusted full value of such a parcel of wholly exempt real property located in such municipality may, at its own expense, obtain two independent appraisals of the full value of such parcel; in which case the average of such board's adjusted value and two values determined in such appraisals shall constitute such parcel's full value for such purpose.

* NB There are 2 § 1262-r's

§ 1262-s. Disposition of net collections from the additional one-quarter of one percent rate of sales and compensating use taxes in the county of Herkimer. Notwithstanding any contrary provision of law, if the county of Herkimer imposes the additional one-quarter of one percent rate of sales and compensating use taxes authorized by section twelve hundred ten-E of this article for all or any portion of the period beginning December first, two thousand seven and ending November thirtieth, two thousand twenty-seven, the county shall use all net collections from such additional one-quarter of one percent rate to pay the county's expenses for the construction of additional correctional facilities. The net collections from the additional rate imposed pursuant to section twelve hundred ten-E of this article shall be deposited in a special fund to be created by such county separate and apart from any other funds and accounts of the county. Any and all remaining net collections from such additional tax, after the expenses

of such construction are paid, shall be deposited by the county of Herkimer in the general fund of such county for any county purpose.

*** § 1262-t. City of Yonkers - disposition of net collections from the additional one-half of one percent rate of sales and compensating use taxes in** the city of Yonkers. Notwithstanding any provision of law to the contrary, if the city of Yonkers imposes the additional one-half of one percent rate of sales and compensating use taxes authorized by item (b) of clause one of subparagraph (ii) of the opening paragraph of section twelve hundred ten of this article, the city shall use the net collections from such additional one-half of one percent rate solely for the support of education, unless the city council votes, on an annual basis, to use such net collections for a different purpose of the city, provided, however, that the requirements of paragraph b of subdivision five-b of section two thousand five hundred seventy-six of the education law are met.

* NB Repealed November 30, 2027

§ 1262-u. Allocation and distribution of certain net collections in Genesee county. If the county of Genesee enters into an agreement pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this part with the city of Batavia to allocate and distribute a portion of net collections due the county from its taxes imposed pursuant to the authority of subdivision (a) of section twelve hundred ten of this article, the agreement may be for a term not exceeding forty years and the state comptroller shall not disapprove such agreement based on the length of its term, provided that such term shall not exceed forty years.

§ 1262-v. Allocation of net collections from the additional one percent rate of sales and compensating use taxes in the county of St. Lawrence. Notwithstanding any contrary provision of law, one-half of the net collections received by the county of St. Lawrence from within the boundaries of the city of Ogdensburg from the one percent sales and

compensating use taxes in addition to the three percent rate, each as authorized by section twelve hundred ten of this article, shall be allocated and distributed and paid in cash quarterly by such county to the city of Ogdensburg.

§ 1262-w. Disposition of net collections from the additional rate of sales and compensating use tax in the county of Putnam. Notwithstanding any contrary provision of law, if the county of Putnam imposes the additional one percent rate of sales and compensating use taxes authorized by section twelve hundred ten of this article for all or any portion of the period beginning September first, two thousand seven and ending November thirtieth, two thousand twenty-seven, the county shall allocate one-ninth of the net collections from the additional one percent to the towns and villages in the county on the basis of their respective populations, determined in accordance with the latest decennial federal census. Each town and village within the county shall receive at minimum, a sum of fifty thousand dollars annually and shall use such revenue for public projects limited to local infrastructure projects and capital improvements.

§ 1263. Deposit of funds and use of funds not having assigned purposes. (a) Deposit and use of net collections from taxes imposed by cities of over one million administered and collected by state tax commission. Net collections paid to the director of finance of the city of New York and any other appropriate fiscal officer of any city having a population of over one million, as provided for in section twelve hundred sixty-one, shall be deposited by such fiscal officer in the general fund of such city, but no part of such revenues may be expended by such city unless appropriated in the annual budget of such city.

(b) Deposit and use of net collections by cities, counties and villages. Net collections received by or distributed to a county, a city with a population of less than one million or a village from taxes imposed pursuant to this article shall be paid into the treasury of the county, city or village and shall be credited to and deposited in the general fund thereof and, unless restricted by local law, ordinance or

resolution to a specified purpose or purposes, shall be available for any county, city or village purpose of such county, city or village. Expenditures from the proceeds of any such tax shall not be considered as part of the cost of government within the meaning of any limitation on expenditures contained in any general, special or local law applicable to such county, city or village.

§ 1264. References to certain taxes or revenues from certain taxes administered by the commissioner. Notwithstanding any provision of this article or other law to the contrary: where a section of subpart B of part one of this article or a local law, ordinance or resolution adopted pursuant to the authority of such subpart B or an agreement described in subdivision (c) of section twelve hundred sixty-two of this part or a section of this part refers to revenues or net collections, or the like, from a tax or taxes imposed pursuant to the authority of such subpart B, and such tax or taxes are imposed on motor fuel and diesel motor fuel, any such reference expressed as a percentage of the rate imposed as a percentage or as a percentage of such revenues or net collections, or the like, shall be deemed also to refer to such tax or taxes imposed on such fuels at a rate of cents per gallon; and any such amount expressed as a percentage shall be calculated in a like manner as an equal fraction of such tax on such fuels imposed at a rate of cents per gallon.

ARTICLE 29-A

TAX ON MEDALLION TAXICAB TRIPS IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT

Section 1280. Definitions.

1281. Imposition of tax.

1282. Presumption of taxability.

1283. Liability for tax; special provisions.

1284. Returns.

1285. Payment of tax.

1286. Records to be kept.

1287. Secrecy of returns and reports.

1288. Deposit and disposition of revenue.

1289. Cooperation by city.

1290. Practice and procedure.

§ 1280. Definitions. When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

(a) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

(b) "MCTD" means the metropolitan commuter transportation district established by section twelve hundred sixty-two of the public authorities law.

(c) "City" means a city of a million or more located in the MCTD.

(d) "Taxicab" means a motor vehicle licensed by the TLC to carry passengers for hire and authorized to accept hails from prospective passengers in the street.

(e) "Taxicab trip" means a taxicab trip provided to one or more passengers regardless of the number of stops, for which the taximeter is required to be in the recording or hired position.

(f) "Taxicab owner" or "owner" means a person licensed by the TLC to own and operate a medallion taxicab.

(g) "Passenger" means an individual seated in a taxicab or HAIL vehicle for travel for hire to a given destination.

(h) "Taximeter" means an instrument or device approved by the TLC by which the charge to a passenger for hire of a licensed taxicab for a taxicab trip or of a HAIL vehicle for a HAIL vehicle trip is automatically calculated and on which such charge is plainly indicated. The taximeter of a HAIL vehicle may also be used to record information of a dispatch trip.

(i) "TLC" means the taxi and limousine commission of the city.

(j) "Agent" means a person that acts, by employment, contract, or otherwise, on behalf of one or more taxicab owners to operate or provide

for the operation of a licensed medallion taxicab in accordance with the TLC's rules. "Agent" shall not include an attorney or representative who appears on behalf of one or more owners before the TLC, the TLC hearing tribunal, the commissioner, or the New York state division of tax appeals, and taxicab drivers licensed pursuant to chapter five of title nineteen of the administrative code of the city of New York when acting in that capacity.

(k) "Medallion" means a plate issued by the TLC as the physical evidence of a taxicab license, and affixed to the outside of such taxicab.

(l) "Taxicab license" means the authority granted by the TLC to an owner to operate a designated vehicle as a taxicab in the city.

(m) "Trip record," also known as a trip sheet or trip log, means the written, computerized, automated or electronic accounting of a taxicab trip, HAIL vehicle trip, or dispatch trip. The trip data to be transmitted or recorded shall include the taxicab license number (medallion number) or HAIL vehicle license number, any licensed operator's TLC license number, and HAIL base permit number; the taxicab driver's license number or HAIL vehicle driver's license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the itemized metered fare for the trip (tolls, surcharge, and tip if paid by credit or debit card); the distance of the trip, the trip number, the method of payment, the total number of passengers, as well as such other information as may be required by the TLC.

(n) "Medallion taxicab" means a taxicab to which a medallion has been affixed in accordance with applicable law and regulations.

(o) "HAIL vehicle" means a for-hire vehicle having a taximeter and a TLC-sanctioned trip record system, licensed by the TLC to carry passengers for hire and authorized to accept hails from prospective passengers in the streets of the city, provided that such authorization shall prohibit the pick-up of passengers by street hail at airports and by street hail or pre-arranged call in Manhattan south of east ninety-sixth street and south of west one hundred tenth street, or in such area as the TLC shall by rule prohibit pursuant to the chapter of the laws of two thousand twelve which added this subdivision.

(p) "For-hire vehicle" means a motor vehicle carrying passengers for

hire in the city, with a seating capacity of twenty passengers or less, not including the driver, other than a taxicab, coach, commuter van or an authorized bus operating pursuant to applicable provisions of law. For the purpose of this subdivision, "seating capacity" shall include any plain view location which is capable of accommodating a normal adult, is part of an overall seat configuration and design, and is likely to be used as a seating position while the vehicle is in motion.

(q) "HAIL vehicle owner" means a person licensed by the TLC to own and operate, or operate, a HAIL vehicle for which the TLC has issued a HAIL license.

(r) "HAIL license" means a license issued by the TLC to a person who is the owner or licensed operator of a for-hire vehicle that authorizes that vehicle to pick up passengers by street hail in the city, provided that such authorization shall prohibit the pick-up of passengers by street hail at airports and by street hail or pre-arranged call in Manhattan south of east ninety-sixth street and south of west one hundred tenth street, or in such area as the TLC shall by rule prohibit pursuant to the chapter of the laws of two thousand twelve which added this subdivision.

(s) "HAIL vehicle trip" means a HAIL vehicle trip provided to one or more passengers regardless of the number of stops, that originated by street hail, and for which the taximeter is required to be in the recording or hired position designating a street hail trip subject to the tax imposed by this article.

(t) "HAIL base" means a person who or which is a for-hire vehicle base station established pursuant to section 19-511 of the administrative code of the city of New York and permitted by the TLC to be affiliated with holders of HAIL licenses.

(u) "Dispatch trip" means a trip in a HAIL vehicle that originated by a customer calling a HAIL base to request service and the HAIL base dispatching the call to the driver of the HAIL vehicle, and for which the taximeter is required to be in the recording or hired position designating such a trip.

(v) "Technology service provider" or "TSP" means a person that acts by employment, contract or otherwise on behalf of one or more taxicab owners or HAIL vehicle owners to collect the trip record for a taxicab trip or HAIL vehicle trip.

(w) "Cash trip" means any trip for which the TSP collects the trip record but does not collect the fare.

§ 1281. Imposition of tax. In addition to any other tax imposed by this chapter or other law, there is hereby imposed on every taxicab owner a tax of fifty cents per taxicab trip and on every HAIL base a tax of fifty cents per HAIL vehicle trip provided by every HAIL vehicle affiliated with the base, on every trip that originates in the city and terminates anywhere within the territorial boundaries of the MCTD.

§ 1282. Presumption of taxability. For the purpose of the proper administration of this article and to prevent evasion of the tax imposed by this article, it shall be presumed that every taxicab trip and every HAIL vehicle trip that originates in the city is subject to the tax imposed by this article. This presumption shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for tax.

§ 1283. Liability for tax; special provisions. Notwithstanding any provision of law to the contrary: (a) The taxicab owner or HAIL base, as the case may be, shall be liable for the tax imposed by this article.

(b) (1) If the taxicab owner has designated an agent, then the agent shall be jointly liable with the taxicab owner for the tax on trips occurring during the period that such designation is in effect. Even if the TLC has specified that the taxicab owner's agent cannot operate as an agent, that agent shall be jointly liable with the taxicab owner if the agent has acted for the taxicab owner. During the period that a taxicab owner's designation of an agent is in effect, the agent shall file the returns required by this article and pay any tax due with such return, but the taxicab owner shall not be relieved of liability for tax, penalty or interest due under this article, or for the filing of returns required to be filed, unless the agent has timely filed accurate returns and timely paid the tax required to be paid under this article. If a taxicab owner has designated an agent, then the agent must perform

any act this article requires the taxicab owner to perform, but the failure of such agent to perform any such act shall not relieve the taxicab owner from the obligation to perform such act or from any liability that may arise from failure to perform the act.

(2) (A) Notwithstanding the foregoing, a TSP that collects the trip record and the trip fare on behalf of a taxicab owner or a HAIL vehicle owner shall withhold from daily collections the taxes due on such trips, and shall withhold from such collections the taxes due on cash trips. If the TSP's daily collections, after retaining any fees to which it is entitled pursuant to a contract with such taxicab owner or HAIL vehicle owner, are insufficient to cover the taxes due on such cash trips, the TSP shall withhold an amount from subsequent daily collections, to the extent funds are available, until all taxes due for a quarterly period described in section twelve hundred eighty-four of this article have been withheld. If a TSP is unable to withhold all the taxes due in such quarterly period, it shall withhold such unwithheld taxes from daily collections in the next quarterly period. A TSP shall be jointly liable for the tax due on all trips for which it collects the trip record, but shall be relieved of liability for any taxes attributable to cash trips for which it was unable to withhold the taxes due because there was insufficient daily collections during four successive quarterly periods.

(B) For any period that the TSP collects trip records on behalf of a taxicab owner or HAIL vehicle owner, the TSP shall file returns reporting the tax due on all trips for which it collected trip records and shall remit the taxes withheld on all such trips and shall report any unwithheld taxes due because of insufficient daily collections to cover the taxes due on cash trips.

(c) (1) Although the tax is imposed on the taxicab owner or the HAIL base, the city or the TLC shall adopt or amend ordinances or regulations to ensure that the economic incidence of the tax is passed through to passengers, such as by increasing taxicab or HAIL vehicle trip fares. The passing along of such economic incidence may not be construed by any court or administrative body as imposing the tax on any person other than the taxicab owner or the HAIL base. The city or the TLC must adjust trip fares to include therein the pass-through of the economic incidence of the tax imposed by this article, as the rate of such tax may from time to time change, and must timely require that any taximeter in a

taxicab or HAIL vehicle used to provide trips that originate in the city be adjusted to include the pass-through.

(2) A taxicab owner or a HAIL base or HAIL vehicle owner in such city must timely adjust the taximeter in any of such person's taxicabs or HAIL vehicles so that it reflects such pass-through as such pass-through amount may from time to time change.

(3) Neither the failure of such city or the TLC to adjust fares nor the failure of a taxicab owner, HAIL base, HAIL vehicle owner, or other person to adjust a taximeter will relieve any person liable for the tax imposed by this article from the obligation to pay such tax timely, at the correct rate.

(d) Nothing in this article shall be construed as limiting the imposition of any tax imposed by article twenty-eight of this chapter on transportation service provided by a HAIL base, HAIL vehicle, or owner or operator of a HAIL vehicle. Nor shall anything in article twenty-eight of this chapter be construed as limiting the imposition of any tax imposed by this article on a HAIL vehicle trip or as limiting the obligation on a HAIL base to pay such tax.

§ 1284. Returns. Every person liable for the tax imposed by this article shall file a return quarterly with the commissioner. Each return shall show the number of trips in the quarter for which the return is filed, together with such other information as the commissioner may require. The returns required by this section shall be filed for quarterly periods ending on the last day of March, June, September, and December of each year, and each return shall be filed within twenty days after the end of the quarterly period covered thereby. Every such person shall also file a return with the commissioner for the period of November and December two thousand nine, by January twentieth, two thousand ten, containing the information described above. If the commissioner deems it necessary in order to ensure the payment of the tax imposed by this article, the commissioner may require returns to be made for shorter periods than prescribed by the foregoing provisions of this section, and upon such dates as the commissioner may specify. The form of returns shall be prescribed by the commissioner and shall contain such information as the commissioner may deem necessary for the

proper administration of this article. The commissioner may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice. The commissioner may require that the returns be filed electronically.

§ 1285. Payment of tax. Every person required to file a return under this article shall, at the time of filing such return, pay to the commissioner the total of all tax imposed by this article, on the correct number of trips subject to tax under this article. The amount so payable to the commissioner for the period for which a return is required to be filed shall be due and payable to the commissioner on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the correct number of trips or the amount of tax due thereon. The commissioner may require that the tax be paid electronically.

§ 1286. Records to be kept. (a) Every person liable for any tax imposed by this article shall keep:

(1) records of every taxicab or HAIL vehicle trip originating in the city and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner may require;

(2) a true and complete copy of every contract, agreement, or arrangement concerning the lease, rental, or license to use a taxicab for which the person is required to remit the tax on trips imposed by this article on such person;

(3) a true and complete copy of every contract, agreement, or arrangement concerning the appointment of an agent;

(4) a true and complete copy of every contract, agreement, or arrangement concerning the affiliation of a HAIL vehicle or of a HAIL vehicle owner or driver with a HAIL base;

(5) true and complete copies of any records required to be kept by the TLC; and

(6) such other records and information as the commissioner may require to perform his or her duties under this article.

(b) Every person that has contracted with the city or TLC to provide services to the city, to the TLC, or to persons liable for tax under this article relating to taximeters, to administering taximeters or to information obtained from taximeters and every person that the TLC has authorized to obtain or possess information generated by taximeters shall keep true and complete copies of all meter information.

(c) The records required to be kept by this section shall be available for inspection and examination at any time upon demand by the commissioner or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer. Such records may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original record. If those records are maintained in an electronic format, they must be made available and accessible to the commissioner in electronic format.

§ 1287. Secrecy of returns and reports. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, any person engaged or retained by the department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed with the commissioner pursuant to this article, to divulge or make known in any manner any particulars set forth or disclosed in any such return or report. The officers charged with the custody of such returns and reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this article when the returns, reports or facts shown thereby are directly involved in such action, proceeding or hearing, in any of which events

the court, or in the case of a hearing, the division of tax appeals may require the production of, and may admit into evidence, so much of said returns, reports or of the facts shown thereby, as are pertinent to the action, proceeding or hearing and no more. The commissioner or the division of tax appeals may, nevertheless, publish a copy or a summary of any decision rendered after a hearing required by this article. Nothing in this section shall be construed to prohibit the delivery to a person who has filed a return or report or to such person's duly authorized representative of a certified copy of any return or report filed in connection with such person's tax. Nor shall anything in this section be construed to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the return or report of any person required to pay the tax who shall bring action to review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner or the attorney general or has been instituted, or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a person required to pay the tax under this article. Provided, further, nothing in this section shall be construed to prohibit the disclosure, in such manner as the commissioner deems appropriate, of the names and other appropriate identifying information of those persons required to pay tax under this article.

(b) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may, in his or her discretion, permit the proper officer of the city or the duly authorized representative of such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article; but such permission shall be granted or such information furnished only if the city or the TLC shall have furnished the commissioner with all information requested by the commissioner pursuant to this article and shall have permitted the

commissioner or the commissioner's authorized representative to make any inspection of any records or reports concerning taxicabs, taxicab owners, agents, HAIL vehicles, HAIL vehicle owners, and HAIL bases filed with or possessed by such city or the TLC which the commissioner may have requested from such city or the TLC. Provided, further, that the commissioner may disclose to the city or the TLC whether or not a person liable for the tax imposed by this article has paid all of the tax due under this article as of any given date.

(c) Notwithstanding the provisions of subdivision (a) of this section, the commissioner, in his or her discretion, may require or permit any or all persons liable for any tax imposed by this article, to make payment to banks, banking houses or trust companies designated by the commissioner and to file returns with such banks, banking houses or trust companies as agents of the commissioner, in lieu of paying any such tax directly to the commissioner. However, the commissioner shall designate only such banks, banking houses or trust companies as are already designated by the comptroller as depositories pursuant to section twelve hundred eighty-eight of this article.

(d) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may permit the secretary of the treasury of the United States or such secretary's delegate, or the authorized representative of either such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article, but such permission shall be granted or such information furnished only if the laws of the United States grant substantially similar privileges to the commissioner or officer of this state charged with the administration of the tax imposed by this article, and only if such information is to be used for tax purposes only; and provided further the commissioner may furnish to the commissioner of internal revenue or such commissioner's authorized representative such returns filed under this article and other tax information, as such commissioner may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner by the secretary of the treasury of the United States or

such secretary's delegate, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his or her delegate. Where the commissioner has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department may testify in such actions or proceedings in respect to such returns or other information.

(e) Returns and reports filed under this article shall be preserved for three years and thereafter until the commissioner orders them to be destroyed.

(f) (1) Any officer or employee of the state who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

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

(g) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person

appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns or reports shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or reports or return or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 1288. Deposit and disposition of revenue. Notwithstanding any provision of law to the contrary: (a) All taxes, interest and penalties collected or received by the commissioner pursuant to this article shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, in trust for the credit of the metropolitan transportation authority. An account may be established in one or more of such depositories. Such deposits shall be

kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this section, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds under this article. The commissioner is authorized and directed to deduct from such amounts collected or received under this article, before deposit into the accounts specified by the comptroller, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs to administer, collect and distribute the taxes imposed by this article.

(b) On or before the twelfth day following the end of each month, after reserving such amount for such refunds and such costs, the commissioner shall certify to the comptroller the amount of all revenues so received pursuant to this article during the prior month as a result of the taxes, interest and penalties so imposed.

(c) By the fifteenth day of the last month of each calendar quarter the comptroller shall pay over the amount of revenues from the prior three months in total so certified by the commissioner, without appropriation, into the corporate transportation account of the metropolitan transportation authority special assistance fund established by section twelve hundred seventy-a of the public authorities law to be applied as provided in paragraph (e) of subdivision four of such section twelve hundred seventy-a. Any money collected pursuant to this article that is deposited by the comptroller in the corporate transportation account of the metropolitan transportation authority special assistance fund shall be held in such fund free and clear of any claim by any person or entity paying the tax pursuant to this article, including, without limiting the generality of the foregoing, any right or claim against the metropolitan transportation authority, any of its bondholders, or any subsidiary or affiliate of the metropolitan transportation authority.

§ 1289. Cooperation by city. The city and the TLC shall cooperate with and assist the commissioner to effect the purposes of this article and the commissioner's responsibilities under this article. Such cooperation

shall include the city or TLC obtaining, furnishing, and timely updating current, complete and accurate names, addresses and all other information concerning every (1) taxicab owner, operator, and driver of taxicabs in the city, (2) agent and vehicle owner, and (3) HAIL base, HAIL vehicle owner, HAIL vehicle, and driver of a HAIL vehicle, and the trip records and other records of any of them, in the city's possession or in the possession of any of its agencies, instrumentalities, agents, contractors, or any other person the TLC has authorized or required to obtain or possess such records or information, together with any other information the commissioner requests, all in a format prescribed by, and without cost to, the commissioner. The TLC shall also furnish, or cause to be furnished, in a format prescribed by the commissioner, any records or information in the possession of the TLC, any agent or contractor of the city or the TLC, or any other person the TLC has authorized or required to obtain or possess such records or information, concerning the persons liable for the tax imposed by this article, including, among other things, detailed trip record information. Such cooperation shall also include the TLC assigning identifying numbers and other identifying indicia to HAIL bases, HAIL vehicle owners, HAIL vehicles, and drivers of HAIL vehicles in a format prescribed by the commissioner, so as to facilitate filing returns, paying tax, and performing other tasks required to administer the tax imposed by this article.

§ 1290. Practice and procedure. The provisions of article twenty-seven of this chapter shall apply with respect to the administration of and procedure with respect to the tax imposed by this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article.

ARTICLE 29-B

STATE ASSESSMENT FEE ON TRANSPORTATION NETWORK COMPANY

PREARRANGED TRIPS

Section 1291. Definitions.

1292. Imposition.

1293. Presumption.

1294. Returns and payment of state assessment fee.

1295. Records to be kept.

1296. Secrecy of returns and reports.

1297. Practice and procedure.

1298. Deposit and disposition of revenue.

§ 1291. Definitions. (a) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals and any other form of unincorporated enterprise owned or conducted by two or more persons.

(b) "City" means a city of a million or more located in the metropolitan commuter transportation district established by section twelve hundred sixty-two of the public authorities law.

(c) "Transportation network company" or "TNC" shall have the same meaning as the term is defined in article forty-four-B of the vehicle and traffic law.

(d) "TNC prearranged trip" shall have the same meaning as the term is defined in article forty-four-B of the vehicle and traffic law.

(e) "TNC driver" shall have the same meaning as the term is defined in article forty-four-B of the vehicle and traffic law.

(f) "TNC vehicle" shall have the same meaning as the term is defined in article forty-four-B of the vehicle and traffic law.

(g) "Gross trip fare" means the sum of the base fare charge, distance charge and time charge for a complete TNC prearranged trip at the applicable rate charged by the TNC at the time such trip is arranged.

§ 1292. Imposition. There is hereby imposed on every TNC a state assessment fee of 4% of the gross trip fare of every TNC prearranged

trip provided by such TNC that originates anywhere in the state outside the city and terminates anywhere in this state.

§ 1293. Presumption. For the purpose of the proper administration of this article and to prevent evasion of the state assessment fee imposed by this article, it shall be presumed that every TNC prearranged trip that originates anywhere in the state outside the city is subject to the state assessment fee. This presumption shall prevail until the contrary is proven by the person liable for the fee.

§ 1294. Returns and payment of state assessment fee. (a) Every person liable for the state assessment fee imposed by this article shall file a return on a calendar-quarterly basis with the commissioner. Each return shall show the number of TNC prearranged trips, the total gross trip fares and the amount of fees due thereon in the quarter for which the return is filed, together with such other information as the commissioner may require. The returns required by this section shall be filed within thirty days after the end of the quarterly period covered thereby. If the commissioner deems it necessary in order to ensure the payment of the state assessment fee imposed by this article, the commissioner may require returns to be made for shorter periods than prescribed by the foregoing provisions of this section, and upon such dates as the commissioner may specify. The form of returns shall be prescribed by the commissioner and shall contain such information as the commissioner may deem necessary for the proper administration of this article. The commissioner may require amended returns to be filed within thirty days after notice and to contain the information specified in the notice. The commissioner may require that the returns be filed electronically.

(b) Every person required to file a return under this article shall, at the time of filing such return, pay to the commissioner the total of all state assessment fees on the correct number of trips subject to such fee under this article. The amount so payable to the commissioner for the period for which a return is required to be filed shall be due and payable to the commissioner on the date specified for the filing of the

return for such period, without regard to whether a return is filed or whether the return that is filed correctly shows the correct number of trips, gross trip fares or amount of fees due thereon. The commissioner may require that the fee be paid electronically.

§ 1295. Records to be kept. Every person liable for the state assessment fee imposed by this article shall keep:

(a) records of every TNC prearranged trip subject to the state assessment fee under this article, and of all amounts paid, charged or due thereon, in such form as the commissioner may require;

(b) true and complete copies, including electronic copies, of any records required to be kept by a state agency that is authorized to permit or regulate a TNC; and

(c) such other records and information as the commissioner may require to perform his or her duties under this article.

§ 1296. Secrecy of returns and reports. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, any person engaged or retained by the department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed with the commissioner pursuant to this article, to divulge or make known in any manner any particulars set forth or disclosed in any such return or report. The officers charged with the custody of such returns and reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a state assessment fee due under this article to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this article when the returns, reports or facts shown thereby are directly involved in such action, proceeding or hearing, in any of which events the court, or in the case of a hearing, the division

of tax appeals may require the production of, and may admit into evidence, so much of said returns, reports or of the facts shown thereby, as are pertinent to the action, proceeding or hearing and no more. The commissioner or the division of tax appeals may, nevertheless, publish a copy or a summary of any decision rendered after a hearing required by this article. Nothing in this section shall be construed to prohibit the delivery to a person who has filed a return or report or to such person's duly authorized representative of a certified copy of any return or report filed in connection with such person's state assessment fee. Nor shall anything in this section be construed to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the return or report of any person required to pay the state assessment fee who shall bring action to review the state assessment fee based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner or the attorney general or has been instituted, or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any state assessment fee paid by a person required to pay the state assessment fee under this article. Provided, further, nothing in this section shall be construed to prohibit the disclosure, in such manner as the commissioner deems appropriate, of the names and other appropriate identifying information of those persons required to pay state assessment fee under this article.

(b) Notwithstanding the provisions of subdivision (a) of this section, the commissioner, in his or her discretion, may require or permit any or all persons liable for any state assessment fee imposed by this article, to make payment to banks, banking houses or trust companies designated by the commissioner and to file returns with such banks, banking houses or trust companies as agents of the commissioner, in lieu of paying any such state assessment fee directly to the commissioner. However, the commissioner shall designate only such banks, banking houses or trust companies as are already designated by the comptroller as depositories pursuant to section twelve hundred eighty-eight of this chapter.

(c) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may permit the secretary of the treasury of the United States or such secretary's delegate, or the authorized representative of either such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information concerning an item contained in any such return, or disclosed by any investigation of liability under this article, but such permission shall be granted or such information furnished only if the laws of the United States grant substantially similar privileges to the commissioner or officer of this state charged with the administration of the state assessment fee imposed by this article, and only if such information is to be used for purposes of tax administration only; and provided further the commissioner may furnish to the commissioner of internal revenue or such commissioner's authorized representative such returns filed under this article and other tax information, as such commissioner may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner by the secretary of the treasury of the United States or such secretary's delegate, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his or her delegate. Where the commissioner has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department may testify in such actions or proceedings in respect to such returns or other information.

(d) Returns and reports filed under this article shall be preserved for three years and thereafter until the commissioner orders them to be destroyed.

(e) (1) Any officer or employee of the state who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

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

(f) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on

ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns or reports specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return or report, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return or report, and any social security numbers, account numbers and residential address information.

(2) No returns or reports shall be furnished pursuant to this

subdivision unless the chairperson of the requesting committee certifies in writing that such returns or reports have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or reports or return or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns or reports are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 1297. Practice and procedure. The provisions of article twenty-seven of this chapter shall apply with respect to the administration of and procedure with respect to the state assessment fee imposed by this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the state assessment fee under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article.

§ 1298. Deposit and disposition of revenue. All taxes, fees, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

ARTICLE 29-C

CONGESTION SURCHARGE

Section 1299. Definitions.

1299-A. Imposition of tax.

1299-B. Liability for surcharge.

1299-D. Returns and payment of surcharge.

- 1299-E. Records to be kept.
- 1299-F. Secrecy of returns and reports.
- 1299-G. Practice and procedure.
- 1299-H. Deposit and disposition of revenue.
- 1299-I. Cooperation by regulatory agencies.

§ 1299. Definitions. (a) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals and any other form of unincorporated enterprise owned or conducted by two or more persons.

(b) "Motor vehicle" shall have the same meaning as the term is defined in section one hundred twenty-five of the vehicle and traffic law.

(c) "For-hire vehicle" means a motor vehicle, other than an ambulance as defined by section one hundred-b of the vehicle and traffic law and a bus as defined in paragraph thirty-four of subdivision (b) of section eleven hundred one of this chapter, carrying passengers for hire.

(d) "Pool vehicle" means a for-hire vehicle that is available for the shared provision of transportation by two or more passengers (or groups of passengers) that separately request transportation and (i) are each charged the same predetermined amount per ride, or (ii) are each billed independently for a ride in an amount that is proportionate to the transportation they receive.

(e) "For-hire transportation trip" means transportation provided in a for-hire vehicle that is not a pool vehicle, regardless of the number of stops, for which a charge is made, but shall not include transportation provided by, or pursuant to a contract with, school districts, or in connection with funerals.

(f) "Congestion zone" means the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th street.

(g) "Regulatory agency" means any entity in the state that regulates any person or motor vehicle involved in the provision of for-hire transportation trips, including the owners, agents and drivers of for-hire vehicles.

§ 1299-A. Imposition of tax. (a) In addition to any other tax or assessment imposed by this chapter or other law, there is hereby imposed, beginning on January first, two thousand nineteen, a surcharge on for-hire transportation trips of two dollars and seventy-five cents for each such trip that originates and terminates in the congestion zone, for each such trip that originates anywhere in the state and terminates within the congestion zone, for each such trip that originates in the congestion zone and terminates anywhere in this state, and for each such trip that originates anywhere in the state, enters into the congestion zone while in transit, and terminates anywhere in the state. For purposes of this subsection, a for-hire transportation trip shall be deemed to originate in the congestion zone when any requesting passenger is picked up there (or if the billing for the ride, or any portion thereof, is commenced there), and is deemed to terminate in the congestion zone when any requesting passenger is dropped off there. Provided however, if the for-hire transportation trip is provided by a for-hire vehicle that is also subject to article twenty-nine-A of this chapter, excluding a HAIL vehicle as defined by such article, the rate of surcharge under this subsection shall be two dollars and fifty cents for each trip.

(b) In addition to any other tax or assessment imposed by this chapter or other law, beginning on January first, two thousand nineteen, there is hereby imposed on transportation provided by pool vehicles a surcharge of seventy-five cents for each person that both enters and exits the pool vehicle in the state, and who is picked up in, dropped off in, or travels through the congestion zone.

(c) Notwithstanding the foregoing, the surcharge imposed by this article shall not apply to transportation services that are administered by or on behalf of the metropolitan transportation authority, including paratransit services.

(d) Receipts subject to tax under paragraph ten of subdivision (c) of section eleven hundred five of this chapter, as well as the gross trip fare of every TNC prearranged trip as those terms are defined by section twelve hundred ninety-one of this chapter, shall be deemed to exclude any surcharge imposed by this article.

§ 1299-B. Liability for surcharge. (a) Notwithstanding any provision of law to the contrary, any person that dispatches a motor vehicle by any means that provides transportation that is subject to a surcharge imposed by this article, including transportation network companies as defined in article forty-four-B of the vehicle and traffic law, shall be liable for the surcharge imposed by this article, except that in the case of taxicab trips and HAIL vehicle trips that are also subject to tax pursuant to article twenty-nine-A of this chapter: (1) a TSP that collected the trip record and trip fare shall withhold from daily collections the surcharges due on such trips, and shall withhold from such collections the surcharges due on cash trips. If the TSP's daily collections, after retaining any fees to which it is entitled pursuant to a contract with such taxicab owner or HAIL vehicle owner, are insufficient to cover the surcharges due on such cash trips, the TSP shall withhold an amount from subsequent daily collections, to the extent funds are available, until all surcharges due for a monthly period have been withheld. If a TSP is unable to withhold all the surcharges due in a monthly period, it shall withhold such unwithheld surcharges from daily collections in the next monthly period. A TSP shall be jointly liable for the surcharge imposed by this article for all trips for which the TSP collected the trip record, but shall be relieved of liability for any surcharges attributable to cash trips for which it was unable to withhold the surcharges because there were insufficient daily collections during twelve successive monthly periods. (2) The TSP shall be responsible for filing monthly returns reporting the surcharges due on all trips for which it collected trip records, shall remit the surcharges withheld on all such trips and shall report any unwithheld surcharges due because of insufficient daily collections to cover the tax due on cash trips. For purposes of this section, the terms "taxicab trips," "HAIL vehicle trips," "taxicab owner," "HAIL base," "TSP" and "cash trip" shall have the same meaning as they do in section twelve hundred eighty of this chapter.

(b) Notwithstanding any law to the contrary: (1) The surcharge imposed by this article must be passed along to passengers and separately stated on any receipt that is provided to such passengers. The passing along of

such surcharge shall not be construed by any court or administrative body as the imposition of the surcharge on the person or entity that pays for the for-hire transportation trip. All regulatory agencies must adjust any fares that are authorized by them to include the surcharge imposed by this article, and must require that any meter or other instrument used in any for-hire vehicle regulated by it to calculate fares be adjusted to include the surcharge.

(2) Neither the failure of a regulatory agency to adjust fares nor the failure to adjust a meter or other instrument used in a for-hire vehicle to calculate fares shall relieve any person liable for the surcharge imposed by this article from the obligation to pay such surcharge.

§ 1299-D. Returns and payment of surcharge. (a) Every person liable for the surcharge imposed by this article shall file a return with the commissioner on a monthly basis. Each return shall show the number of for-hire transportation trips, or the number of pool vehicle passengers, subject to the surcharge imposed by this article in the month for which the return is filed, along with such other information as the commissioner may require. The returns required by this section shall be filed within twenty days after the end of the month covered thereby. If the commissioner deems it necessary to ensure the payment of the surcharge imposed by this article, he or she may require returns to be made for shorter periods than prescribed by the foregoing provisions of this section, and upon such dates as may be specified. The form of returns shall be prescribed by the commissioner and shall contain such information as the commissioner may deem necessary for the proper administration of this article. The commissioner may require that returns be filed electronically.

(b) Every person liable for the surcharge imposed by this article shall, at the time of filing such return, pay to the commissioner the total amount of all surcharges due under this article. Such amount shall be due and payable on the date specified for the filing of the return for such period, without regard to whether a return is filed, or whether the return that is filed correctly shows the correct number of for-hire trips are subject the surcharge, or the correct surcharge amount due thereon. The commissioner may require that the surcharge be paid

electronically.

(c) In addition to any other penalty or interest provided for under this article or other law, and unless it is shown that such failure is due to reasonable cause and not due to willful neglect, any person liable for the surcharge imposed by this article that fails to pay such surcharge when due shall be liable for a penalty in an amount equal to two hundred percent of the total surcharge amount that is due.

§ 1299-E. Records to be kept. Every person liable for the surcharge imposed by this article shall keep, and shall make available for review upon demand by the commissioner:

(1) records of every trip provided or arranged by such person, or provided through the use of a for-hire vehicle owned or leased by such person, including all amounts paid, charged or due thereon, in such form as the commissioner may require;

(2) true and complete copies of any records required to be kept by any applicable regulatory department or agency; and

(3) such other records and information as the commissioner may require to perform his or her duties under this article.

§ 1299-F. Secrecy of returns and reports. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, any person engaged or retained by the department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed with the commissioner pursuant to this article, to divulge or make known in any manner any particulars set forth or disclosed in any such return or report. The officers charged with the custody of such returns and reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter, or in any other action or proceeding involving the collection of a tax due under this chapter to which the state, the commissioner or an agency that is authorized to permit or

regulate the provision of any relevant transportation is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action, proceeding or hearing, in any of which events the court, or in the case of a hearing, the division of tax appeals, may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed, however, to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article, or from providing any information contained in any such return or report, by or to a duly authorized officer or employee of the comptroller; nor to prohibit the inspection or delivery of a certified copy of any return or report filed under this article, or the provision of any information contained therein, by or to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; nor to prohibit the commissioner from providing or certifying to the division of budget or the comptroller the total number of returns or reports filed under this article in any reporting period and the total collections received therefrom; nor to prohibit the delivery to a person liable for the surcharge imposed by this article, or a duly authorized representative of such, a certified copy of any return or report filed by such person pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof; nor to prohibit the disclosure, in such manner as the commissioner deems appropriate, of the names and other appropriate identifying information of those persons required to pay the surcharge imposed by this article.

(b) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may permit the secretary of the treasury of the United States or such secretary's delegate, or the authorized representative of either such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information

concerning an item contained in any such return, or disclosed by any investigation of liability under this article, but such permission shall be granted or such information furnished only if the laws of the United States grant substantially similar privileges to the commissioner or officer of this state charged with the administration of the surcharge imposed by this article, and only if such information is to be used for purposes of tax administration only; and provided further the commissioner may furnish to the commissioner of internal revenue or such commissioner's authorized representative such returns filed under this article and other tax information, as such commissioner may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner by the secretary of the treasury of the United States or such secretary's delegate, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his or her delegate. Where the commissioner has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department may testify in such actions or proceedings in respect to such returns or other information.

(c) (1) Any officer or employee of the state who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

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

(d) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of

the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or reports or return or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and

procedures established in 26 U.S.C. Section 6103(f).

(e) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may, in his or her discretion, permit the proper officer of the taxi and limousine commission of the city of New York (TLC) or the duly authorized representative of such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article; but such permission shall be granted or such information furnished only if the TLC shall have furnished the commissioner with all information requested by the commissioner pursuant to this article and shall have permitted the commissioner or the commissioner's authorized representative to make any inspection of any records or reports concerning for-hire transportation trips subject to the surcharge imposed by this article, and any persons required to collect such surcharge, filed with or possessed by the TLC that the commissioner may have requested from the TLC. Provided, further, that the commissioner may disclose to the TLC whether or not a person liable for the surcharge imposed by this article has paid all of the surcharges due under this article as of any given date.

§ 1299-G. Practice and procedure. The provisions of article twenty-seven of this chapter shall apply with respect to the administration of and procedure with respect to the surcharge imposed by this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the surcharge imposed by this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article.

§ 1299-H. Deposit and disposition of revenue. (a) Any surcharge, interest, and penalties collected or received by the commissioner shall be deposited daily with such responsible banks, banking houses or trust

companies, as may be designated by the comptroller, to the credit of the comptroller in trust for the metropolitan transportation authority. An account may be established in one or more of such depositories. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds under this article. The commissioner is authorized and directed to deduct from the amounts it receives under this article, before deposit into the trust accounts designated by the comptroller, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs incurred to administer, collect and distribute the surcharge, interest, and penalties imposed by this article.

(b) On or before the twelfth day of each month, after reserving such amount for such refunds and deducting such amounts for such costs, as provided for in subdivision (a) of this section, the commissioner shall certify to the comptroller the amount of revenues so received during the prior month as a result of the surcharge, interest and penalties so imposed. Notwithstanding any provision of law to the contrary, after deducting the amounts specified in the previous sentence, the first three hundred sixty-two million dollars collected or received in calendar year two thousand nineteen, the first three hundred one million dollars collected or received in calendar year two thousand twenty, and the first three hundred million dollars collected or received in each calendar year thereafter, shall be deposited by the comptroller, without appropriation, pursuant to subdivision (c) of this section. The next fifty million dollars collected or received in calendar year two thousand nineteen, and in each year thereafter, in excess of funds collected and deposited pursuant to subdivision (c) of this section, shall be deposited by the comptroller, without appropriation, pursuant to subdivision (d) of this section, provided, however, that any uncommitted fund balance at the end of each calendar year through the approval process of subdivision three of section twelve hundred seventy-i of the public authorities law shall be transferred on the last business day of the calendar year by the metropolitan transportation authority from the outer borough transportation account to the general

transportation account of the New York city transportation assistance fund created by section twelve hundred seventy-i of the public authorities law. Any amounts collected or received, in any year, that are in excess of the amounts deposited pursuant to subdivisions (c) and (d) of this section, shall be deposited by the comptroller, without appropriation, pursuant to subdivision (e) of this section.

(c) The amount of revenues so certified shall be paid over by the fifteenth business day of each succeeding month from such account, without appropriation, into the subway action plan account of the New York city transportation assistance fund established pursuant to section twelve hundred seventy-i of the public authorities law.

(d) The amount of revenues so certified that are in excess of the amounts deposited as provided in subdivision (c) of this section, shall be paid over by the fifteenth business day of each succeeding month from such account, without appropriation, into the outer borough transportation account of the New York city transportation assistance fund established pursuant to section twelve hundred seventy-i of the public authorities law.

(e) The amount of revenues so certified that are in excess of the amounts deposited as provided in subdivisions (c) and (d) of this section, shall be paid over by the fifteenth business day of each succeeding month from such account, without appropriation, into the general transportation account of the New York city transportation assistance fund established pursuant to section twelve hundred seventy-i of the public authorities law.

(f) Notwithstanding any provision of law to the contrary, any surcharge imposed by this article that is paid in connection with transportation provided to persons eligible for medical assistance who are transported pursuant to section three hundred sixty-five-h of the social services law shall be transferred on a quarterly basis from the account specified in paragraph (a) of this section to the Medicaid management information system escrow fund. The commissioner of health shall collect the Medicaid transportation data necessary to determine an amount to be transferred each quarter; provided that such amount shall be reconciled in the subsequent quarter to reflect actual Medicaid surcharge expenditures; and further provided that any difference between the amount transferred and the reconciled amount shall be added to or

subtracted from the amount transferred in the following quarter.

§ 1299-I. Cooperation by regulatory agencies. All regulatory agencies shall cooperate with and assist the commissioner to effectuate the purposes of this article and the commissioner's responsibilities hereunder. Such cooperation shall include obtaining, furnishing, and timely updating current, complete and accurate names, addresses and all other information concerning: (1) every for-hire vehicle owner, operator, and driver of for-hire vehicles licensed or permitted by such licensing agency; (2) every agent of such person, if any; and (3) any other person or entity that is licensed or permitted by such licensing agency. Such cooperation shall also include furnishing to the commissioner all written, computerized, automated or electronic records in the regulatory agency's possession, or in the possession of any of its agents, instrumentalities, contractors, or any other person authorized or required to obtain or possess such records or information, that account for any transportation and operation for hire provided by a licensed or permitted person or entity. Such information shall be provided to the commissioner without cost, and in a format prescribed by the commissioner.

ARTICLE 30

CITY PERSONAL INCOME TAX

Section 1300. Short title.

1301. Authority to impose taxes.

1301-B. City separate tax on the ordinary income portion of lump sum distributions.

1302. Persons subject to tax.

1303. City taxable income.

1304. Rate of tax.

1304-A. Tax surcharge.

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1304-C. Filing fees.

1304-D. Imposition of tax.

1305. City resident and city nonresident defined.

- 1306. Returns and liabilities.
- 1307. Change of resident status.
- 1309. Requirement of withholding tax from wages.
- 1310. Credits against tax.
- 1311. Enforcement with other taxes.
- 1312. Administration, collection and review.
- 1313. Deposit and disposition of revenues.

§ 1300. Short title. This article shall be known and may be cited as the "city personal income tax".

§ 1301. Authority to impose taxes. (a) Notwithstanding any other provision of law to the contrary, any city in this state having a population of one million or more inhabitants, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city, for taxable years beginning after nineteen hundred seventy-five:

(1) a tax on the personal income of residents of such city, at the rates provided for under subsection (a) of section thirteen hundred four of this article for taxable years beginning before two thousand thirty, and at the rates provided for under subsection (b) of section thirteen hundred four of this article for taxable years beginning after two thousand twenty-nine, provided, however, that if, for any taxable year beginning after two thousand twenty-nine, the rates set forth in such subsection (b) are rendered inapplicable and the rates set forth in such subsection (a) are rendered applicable, then the tax for such taxable year shall be at the rates provided under subparagraphs (A) of paragraphs one, two and three of such subsection (a),

(2) for taxable years beginning after nineteen hundred seventy-six, a separate tax on the ordinary income portion of lump sum distributions of such residents, at the rates provided for herein, such taxes to be administered, collected and distributed by the commissioner as provided for in this article.

(b) All the provisions of the local laws imposing the taxes authorized by this article shall be identical to the corresponding provisions of

article twenty-two of this chapter, except as to rate and except as otherwise provided in this article, so far as the provisions of such article twenty-two can be made applicable to the taxes authorized, with such limitations and modifications as may be necessary in order to adapt such language to the city income taxes authorized by this article.

(d) A local law enacted pursuant to the authority of this section or repealing or suspending such taxes shall go into effect on the first day of January, nineteen hundred seventy-six and shall apply to taxable years beginning on or after such date. No such local law shall be effective unless a certified copy of such local law is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least fifteen days prior to the date it is to become effective. However, the commissioner may waive and reduce such fifteen-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within such period as the commissioner deems such action to be consistent with the commissioner's duties under this article. Any amendment to the provisions of article twenty-two of this chapter to the extent that such amendment is applicable to the taxes imposed under such local law, shall be deemed to have been incorporated in the analogous provision or provisions of such local law.

(e) Certified copies of such local law shall also be filed with the clerk of the city wherein the tax is imposed, the secretary of state and the state comptroller prior to the effective date of such enactment.

§ 1301-B. City separate tax on the ordinary income portion of lump sum distributions. (a) Imposition of separate tax. The city separate tax on the ordinary income portion of a lump sum distribution imposed pursuant to the authority of this article shall be imposed for each taxable year on the ordinary income portion of a lump sum distribution of every resident individual, estate or trust of such city which has made an election of lump sum treatment under subsection (e) of section four hundred two of the internal revenue code.

(b) Amount of separate tax. The amount of tax imposed pursuant to the authority of subsection (a) for any taxable year shall be an amount equal to five times the tax which would be imposed at the rate set forth

in paragraph three of subsection (a) or (b) of section thirteen hundred four of this article, whichever may be applicable, if the recipient were an individual referred to in such subsection and the city taxable income referred to were an amount equal to one-fifth of the excess of:

(1) the total taxable amount of the lump sum distribution for the taxable year, over

(2) the minimum distribution allowance.

(c) Minimum distribution allowance. For purposes of this section, the minimum distribution allowance shall be that which is calculated according to subparagraph (C) of paragraph one of subsection (e) of section four hundred two of the internal revenue code.

(d) Liability for tax. The recipient of a lump sum distribution shall be liable for the tax imposed pursuant to the authority of this section.

(e) Multiple distributions and distributions of annuity contracts. For purposes of this section the rules concerning multiple distributions and distributions of annuity contracts as specified by paragraph two of subsection (e) of section four hundred two of the internal revenue code shall be applicable, except that references to the "tax imposed by paragraph (1) (A)" shall be deemed to be references to the city separate tax on the ordinary income portion of a lump sum distribution authorized by this article, and except that only lump sum distributions (or portions thereof) and distributions of annuity contracts subject to the city separate tax on the ordinary income portion of lump sum distributions authorized by this article shall be included, and except that references to the secretary shall be deemed to be references to the tax commission.

(f) Definitions and special rules. For purposes of this section, the following provisions shall apply, to the extent applicable to the taxpayer's federal tax on lump sum distributions: (1) the definitions and special rules as specified in paragraph four of subsection (e) of section four hundred two of the internal revenue code; and (2) the special rules relating to (A) individuals who have attained the age of fifty before January first, nineteen hundred eighty-six and (B) capital gains, as specified in paragraphs three, four, five and six of subsection (h) of section eleven hundred twenty-two of the tax reform act of nineteen hundred eighty-six as enacted by public law 99-514, but (i) in the event that paragraph three of such subsection is applicable,

clause (ii) of subparagraph (B) of such paragraph shall be applied using a rate of one and seventy-two hundredths percent, and (ii) in the event that paragraph five of such subsection is applicable, the words "five" and "one-fifth" in subsection (b) of this section shall be read as "ten" and "one-tenth", respectively, and subsection (b) of this section shall be applied by using the rate of tax specified in subsection (a) of section thirteen hundred four as such subsection was in effect for taxable years beginning in nineteen hundred eighty-six.

(g) Credits. The credits against tax authorized under this article, except for the credit under subsection (a) of section thirteen hundred ten, shall not be allowed against the city separate tax on the ordinary income portion of lump sum distributions imposed pursuant to the authority of this article.

§ 1302. Persons subject to tax. (a) Imposition of tax. The city personal income tax (other than the city separate tax on the ordinary income portion of lump sum distributions) imposed pursuant to the authority of this article shall be imposed for each taxable year on the city taxable income of every city resident individual, estate and trust. A taxpayer's taxable year for purposes of a tax imposed pursuant to the authority of this article shall be the same as his taxable year under article twenty-two of this chapter.

(b) Partners and partnerships. A partnership as such shall not be subject to a tax imposed pursuant to the authority of this article. Persons carrying on business as partners shall be liable for such tax only in their separate or individual capacities. As used in this article, the term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

(c) Associations taxable as corporations. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to a tax imposed pursuant to the authority of this article.

(d) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes is exempt from federal income tax shall be exempt from any tax imposed pursuant to the authority of this article (regardless of whether subject to federal income tax on unrelated business taxable income).

§ 1303. City taxable income. The city taxable income of a city resident individual shall mean and be the same as his or her New York taxable income as defined in section six hundred eleven of this chapter, except that it shall include (i) the amount contributed to any or all of the following accounts within the charitable gifts trust fund set forth in section ninety-two-gg of the state finance law, to the extent the amount is claimed as an itemized deduction pursuant to section six hundred fifteen of this chapter: the health charitable account established by paragraph (a) of subdivision four of section ninety-two-gg of the state finance law, or the elementary and secondary education charitable account established by paragraph b of subdivision four of section ninety-two-gg of the state finance law. The city taxable income of a city resident estate or trust shall mean and be the same as its New York taxable income as defined in section six hundred eighteen of this chapter.

§ 1304. Rate of tax. (a) A tax (other than the city separate tax relating to qualified higher education funds and the city separate tax on the ordinary income portion of lump sum distributions) imposed pursuant to the authority of section thirteen hundred one of this article shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subsection

(b) of section thirteen hundred six of this article and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning after two thousand sixteen:

If the city taxable income is:	The tax is:
Not over \$21,600	2.7% of the city taxable income
Over \$21,600 but not over \$45,000	\$583 plus 3.3% of excess over \$21,600
Over \$45,000 but not over \$90,000	\$1,355 plus 3.35% of excess over \$45,000
Over \$90,000	\$2,863 plus 3.4% of excess over \$90,000

(B) For taxable year beginning after two thousand fourteen and before two thousand seventeen:

If the city taxable income is:	The tax is:
Not over \$21,600	2.55% of the city taxable income
Over \$21,600 but not over \$45,000	\$551 plus 3.1% of excess over \$21,600
Over \$45,000 but not over \$90,000	\$1,276 plus 3.15% of excess over \$45,000
Over \$90,000 but not over \$500,000	\$2,694 plus 3.2% of excess over \$90,000
Over \$500,000	\$16,803 plus 3.4% of excess over \$500,000

(C) For taxable years beginning after two thousand nine and before two thousand fifteen:

If the city taxable income is:	The tax is:
Not over \$21,600	2.55% of the city taxable income
Over \$21,600 but not over \$45,000	\$551 plus 3.1% of excess over \$21,600
Over \$45,000 but not over \$90,000	\$1,276 plus 3.15% of excess over \$45,000
Over \$90,000 but not over \$500,000	\$2,694 plus 3.2% of excess over \$90,000
Over \$500,000	\$15,814 plus 3.4% of excess over \$500,000

(2) Resident heads of households. The tax under this section for each

taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following tables:

(A) For taxable years beginning after two thousand sixteen:

If the city taxable income is:	The tax is:
Not over \$14,400	2.7% of the city taxable income
Over \$14,400 but not over \$30,000	\$389 plus 3.3% of excess over \$14,400
Over \$30,000 but not over \$60,000	\$904 plus 3.35% of excess over \$30,000
Over \$60,000	\$1,909 plus 3.4% of excess over \$60,000

(B) For taxable years beginning after two thousand fourteen and before two thousand seventeen:

If the city taxable income is:	The tax is:
Not over \$14,400	2.55% of the city taxable income
Over \$14,400 but not over \$30,000	\$367 plus 3.1% of excess over \$14,400
Over \$30,000 but not over \$60,000	\$851 plus 3.15% of excess over \$30,000
Over \$60,000 but not over \$500,000	\$1,796 plus 3.2% of excess over \$60,000
Over \$500,000	\$16,869 plus 3.4% of excess over \$500,000

(C) For taxable years beginning after two thousand nine and before two thousand fifteen:

If the city taxable income is:	The tax is:
Not over \$14,400	2.55% of the city taxable income
Over \$14,400 but not over \$30,000	\$367 plus 3.1% of excess over \$14,400
Over \$30,000 but not over \$60,000	\$851 plus 3.15% of excess over \$30,000
Over \$60,000 but not over \$500,000	\$1,796 plus 3.2% of excess over \$60,000
Over \$500,000	\$15,876 plus 3.4% of excess Over \$500,000

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under

this section for each taxable year on the city taxable income of every city resident individual who is not a city resident married individual who makes a single return jointly with his or her spouse under subsection (b) of section thirteen hundred six of this article or a city resident head of household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning after two thousand sixteen:

If the city taxable income is:	The tax is:
Not over \$12,000	2.7% of the city taxable income
Over \$12,000 but not over \$25,000	\$324 plus 3.3% of excess over \$12,000
Over \$25,000 but not over \$50,000	\$753 plus 3.35% of excess over \$25,000
Over \$50,000	\$1,591 plus 3.4% of excess over \$50,000

(B) For taxable years beginning after two thousand fourteen and before two thousand seventeen:

If the city taxable income is:	The tax is:
Not over \$12,000	2.55% of the city taxable income
Over \$12,000 but not over \$25,000	\$306 plus 3.1% of excess over \$12,000
Over \$25,000 but not over \$50,000	\$709 plus 3.15% of excess over \$25,000
Over \$50,000 but not over \$500,000	\$1,497 plus 3.2% of excess over \$50,000
Over \$500,000	\$16,891 plus 3.4% of excess over \$500,000

(C) For taxable years beginning after two thousand nine and before two thousand fifteen:

If the city taxable income is:	The tax is:
Not over \$12,000	2.55% of the city taxable income
Over \$12,000 but not over \$25,000	\$306 plus 3.1% of excess over \$12,000
Over \$25,000 but not over \$50,000	\$709 plus 3.15% of excess over \$25,000
Over \$50,000 but not	\$1,497 plus 3.2% of excess

over \$500,000
Over \$500,000

over \$50,000
\$15,897 plus 3.4%
of excess over \$500,000

(b) A tax other than the city separate tax on the ordinary income portion of lump sum distributions imposed pursuant to the authority of section thirteen hundred one of this article shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with such individual's spouse under subsection (b) of section thirteen hundred six of this article and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty-nine:

If the city taxable income is:	The tax is:
Not over \$21,600	1.18% of the city taxable income
Over \$21,600 but not over \$45,000	\$255 plus 1.435% of excess over \$21,600
Over \$45,000 but not over \$90,000	\$591 plus 1.455% of excess over \$45,000
Over \$90,000	\$1,245 plus 1.48% of excess over \$90,000

(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty-nine:

If the city taxable income is:	The tax is:
Not over \$14,400	1.18% of the city taxable income
Over \$14,400 but not over \$30,000	\$170 plus 1.435% of excess over \$14,400
Over \$30,000 but not over \$60,000	\$394 plus 1.455% of excess over \$30,000
Over \$60,000	\$830 plus 1.48% of excess over \$60,000

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every city resident individual who is not a city resident married individual who makes a single return jointly with such individual's spouse under subsection (b) of section thirteen hundred six of this article or a city resident head of household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty-nine:

If the city taxable income is:	The tax is:
Not over \$12,000	1.18% of the city taxable income
Over \$12,000 but not over \$25,000	\$142 plus 1.435% of excess over \$12,000
Over \$25,000 but not over \$50,000	\$328 plus 1.455% of excess over \$25,000
Over \$50,000	\$692 plus 1.48% of excess over \$50,000

§ 1304-A. Tax surcharge. (a) In addition to the taxes authorized by subsection (a) of section thirteen hundred one of this article, any city imposing such taxes is hereby authorized and empowered to adopt and amend local laws imposing in any such city for each taxable year beginning after nineteen hundred eighty-nine but before nineteen hundred ninety-nine, a tax surcharge on the city taxable income of every city resident individual, estate and trust.

(b) A tax surcharge imposed pursuant to the authority of this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax surcharge under this section on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subsection (b) of section thirteen hundred six of this article and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the city taxable income is:	The tax surcharge is:
Not over \$15,500	0
Over \$15,500 but not over \$27,000	0.51% of city taxable income in excess of \$15,500
Over \$27,000 but not over \$45,000	\$59 plus 0.55% of excess over \$27,000
Over \$45,000 but not over \$108,000	\$158 plus 0.51% of excess over \$45,000
Over \$108,000	\$479 plus 0.51% of excess over \$108,000

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

If the city taxable income is:	The tax surcharge is:
Not over \$14,400	0
Over \$14,400 but not over \$27,000	0.51% of city taxable income in excess of \$14,400
Over \$27,000 but not over \$45,000	\$64 plus 0.55% of excess over \$27,000
Over \$45,000 but not over \$108,000	\$162 plus 0.51% of excess over \$45,000
Over \$108,000	\$484 plus 0.51% of excess over \$108,000

(2) Resident heads of households. The tax surcharge under this section on the city taxable income of every city resident head of a household shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the city taxable income is:	The tax surcharge is:
Not over \$8,800	0
Over \$8,800 but not over \$16,500	0.51% of city taxable income in excess of \$8,800
Over \$16,500 but not over \$27,500	\$39 plus 0.55% of excess over \$16,500
Over \$27,500 but not over \$66,000	\$100 plus 0.51% of excess over \$27,500

Over \$66,000	\$296 plus 0.51% of excess over \$66,000
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(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

If the city taxable income is:	The tax surcharge is:
Not over \$7,350	0
Over \$7,350 but not over \$9,200	0.42% of city taxable income in excess of \$7,350
Over \$9,200 but not over \$17,250	\$7 plus 0.51% of excess over \$9,200
Over \$17,250 but not over \$28,750	\$48 plus 0.55% of excess over \$17,250
Over \$28,750 but not over \$69,000	\$111 plus 0.51% of excess over \$28,750
Over \$69,000	\$317 plus 0.51% of excess over \$69,000

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax surcharge under this section on the city taxable income of every city resident individual who is not a city resident married individual who makes a single return jointly with his or her spouse under subsection (b) of section thirteen hundred six or a city resident head of household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the city taxable income is:	The tax surcharge is:
Not over \$9,000	0
Over \$9,000 but not over \$15,000	0.51% of city taxable income in excess of \$9,000
Over \$15,000 but not over \$25,000	\$31 plus 0.55% of excess over \$15,000
Over \$25,000 but not over \$60,000	\$86 plus 0.51% of excess over \$25,000
Over \$60,000	\$264 plus 0.51% of excess over \$60,000

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

If the city taxable income is:

The tax surcharge is:

Not over \$8,400

0

Over \$8,400 but not over \$15,000

0.51% of city taxable income
in excess of \$8,400

Over \$15,000 but not over \$25,000

\$33 plus 0.55% of excess
over \$15,000

Over \$25,000 but not over \$60,000

\$88 plus 0.51% of excess
over \$25,000

Over \$60,000

\$266 plus 0.51% of excess
over \$60,000

(c) A tax surcharge imposed pursuant to the authority of this section shall be administered, collected and distributed by the commissioner of taxation and finance in the same manner as the taxes imposed pursuant to the authority of this article, and all of the provisions of this article, including section thirteen hundred ten, shall apply to the tax surcharge authorized by this section.

(d) (1) Notwithstanding subsection (b) of this section, with respect to taxable years beginning in nineteen hundred ninety-three, nineteen hundred ninety-four, nineteen hundred ninety-five and nineteen hundred ninety-six, the mayor of the city of New York shall, by August first of nineteen hundred ninety-two, nineteen hundred ninety-four and nineteen hundred ninety-five, and by September fifteenth of nineteen hundred ninety-three, transmit to the commissioner a certification setting forth the percentage of non-achievement regarding the combined police uniformed staffing level with respect to the fiscal year of the city of New York ending on the immediately preceding June thirtieth, provided, however, that for the city fiscal year ending in nineteen hundred ninety-three the percentage of non-achievement shall be determined by the combined police uniformed staffing level existing on August thirtieth, nineteen hundred ninety-three, and further provided for all such fiscal years that the percentage of non-achievement shall be calculated according to the procedure specified in a memorandum of understanding relating to the New York city safe streets, safe city program and to the enactment of this subsection dated February eleventh, nineteen hundred ninety-one, as amended, and executed by the governor,

the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the mayor of the city of New York and the speaker of the city council of the city of New York and any modification of such memorandum of understanding subsequently agreed upon by all such signatories in a single subsequent memorandum of understanding. If such percentage of non-achievement is equal to or exceeds twenty-five percent with respect to the fiscal year of the city of New York ending in nineteen hundred ninety-two, twenty percent with respect to the city fiscal year ending in nineteen hundred ninety-three or five percent with respect to the city fiscal years ending in nineteen hundred ninety-four and nineteen hundred ninety-five, then the rates of the tax surcharge authorized by this section for taxable years beginning in the calendar year beginning on January first next succeeding such August first or September fifteenth shall be the products of the rates set forth in subsection (b) of this section and a percentage equal to the difference between one hundred percent and such percentage of non-achievement, such products computed to the nearest hundredth of a percent, and the dollar denominated amounts of the tax surcharge set forth in subsection (b) of this section shall be reduced conformably.

(2) Notwithstanding subsection (b) of this section, with respect to the taxable year beginning in nineteen hundred ninety-eight, the mayor or other chief executive officer of a city in which a tax surcharge is imposed pursuant to the authority of this section shall, by August first of nineteen hundred ninety-seven, transmit to the commissioner a certification setting forth the percentage of non-achievement regarding the police uniformed staffing level with respect to the last fiscal year of such city ending no later than June thirtieth, nineteen hundred ninety-seven, provided, however, that such percentage of non-achievement shall be calculated according to the procedure specified in a new memorandum of understanding relating to the enactment of this paragraph dated no later than thirty days after such enactment, as executed by the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the mayor or other chief executive officer of such city and the speaker or other similar officer of the local legislative body of such city and any modifications of such new memorandum of understanding

subsequently agreed upon by all such signatories in a single subsequent memorandum of understanding. If such percentage of non-achievement exceeds two percent with respect to the fiscal year of such city ending no later than June thirtieth, nineteen hundred ninety-seven, then the rates of the tax surcharge authorized by this section for the taxable years beginning in the calendar year beginning on January first, nineteen hundred ninety-eight shall be the products of the rates set forth in subsection (b) of this section and a percentage equal to the difference between one hundred percent and the portion of the percentage of non-achievement that is in excess of two percent, such products computed to the nearest hundredth of a percent, and the dollar denominated amounts of the tax surcharge set forth in subsection (b) of this section shall be reduced conformably.

(3) If the rates of the surcharge authorized to be imposed pursuant to this section are modified pursuant to paragraph one or paragraph two of this subsection, the commissioner shall promulgate regulations stating the modified rates.

(e) Notwithstanding anything in this section or section thirteen hundred thirteen of this article to the contrary, of the total revenue (including interest and penalties) from the tax surcharge imposed pursuant to the authority of this section which the comptroller is required to pay, after June thirtieth, nineteen hundred ninety-two, to the chief fiscal officer of the city imposing the tax surcharge for payment into the treasury of such city, one hundred ten million dollars thereof paid to such chief fiscal officer during the fiscal year of such city commencing July first, nineteen hundred ninety-two, two hundred million dollars thereof paid to such chief fiscal officer during the fiscal year of such city commencing July first, nineteen hundred ninety-three, one hundred sixty-seven million dollars thereof paid to such chief fiscal officer during the fiscal year of such city commencing July first, nineteen hundred ninety-four, and one hundred eighty-five million dollars thereof paid to such chief fiscal officer during the fiscal year of such city commencing July first, nineteen hundred ninety-five, shall be credited to and deposited in a criminal justice account established by such city within its general fund for the implementation of the safe streets, safe city program. The balance of such revenue shall be credited to the general fund of such city and

shall be applied exclusively to or in aid or support of such city's provision of criminal justice and fire protection services.

(f) Notwithstanding anything in this article to the contrary, of the total revenue (including interest and penalties) from the tax surcharge imposed pursuant to the authority of this section which the comptroller is required to pay to the chief fiscal officer of the city imposing the tax surcharge for payment into the treasury of such city, ninety million dollars thereof paid to such chief fiscal officer during the fiscal year of such city commencing during calendar year nineteen hundred ninety-six, and one hundred eighty-five million dollars thereof paid to such chief fiscal officer during the fiscal year of such city commencing during calendar year nineteen hundred ninety-seven, shall be credited to and deposited in a criminal justice account established by such city within its general fund. The balance of such revenue from such tax surcharge which the comptroller is required to pay to such chief fiscal officer for payment into the treasury of such city for the taxable years beginning in the calendar years beginning on January first, nineteen hundred ninety-seven and January first, nineteen hundred ninety-eight shall be credited to the general fund of such city to be applied exclusively to or in aid or support of such city's provision of criminal justice and fire protection services; provided however, that, notwithstanding the foregoing, such balance shall be applied to implementation of the capital program for public schools within such city and a supplemental capital rehabilitation program for such schools, to the extent that such application is necessary for the timely implementation of such programs in accordance with the memorandum of understanding executed pursuant to paragraph two of subsection (d) of this section and any modifications thereto.

§ 1304-B. Additional tax. (a) (1) In addition to any other taxes authorized by this article, any city imposing such taxes is hereby authorized and empowered to adopt and amend local laws imposing in any such city for each taxable year beginning after nineteen hundred ninety but before two thousand thirty, an additional tax on the city taxable income of every city resident individual, estate and trust, to be calculated for each taxable year as follows: (i) for each taxable year

beginning after nineteen hundred ninety but before nineteen hundred ninety-nine, at the rate of fourteen percent of the sum of the taxes for each such taxable year determined pursuant to section thirteen hundred four and section thirteen hundred four-A of this article; and (ii) for each taxable year beginning after nineteen hundred ninety-eight, at the rate of fourteen percent of the tax for such taxable year determined pursuant to such section thirteen hundred four.

(2) Notwithstanding paragraph one of this subsection, for each taxable year beginning after nineteen hundred ninety-nine but before two thousand thirty, any city imposing such additional tax may by local law impose such tax at a rate that is less than fourteen percent and may impose such tax at more than one rate depending upon the filing status and city taxable income of such city resident individual, estate or trust.

(3) A local law enacted pursuant to paragraph two of this subsection shall be applicable with respect to any taxable year only if it has been enacted on or before July thirty-first of such year. A certified copy of such local law shall be mailed by registered mail to the department at its office in Albany within fifteen days of its enactment. However, the department may allow additional time for such certified copy to be mailed if it deems such action to be consistent with its duties under this article.

(b) The additional tax imposed pursuant to the authority of this section shall be administered, collected and distributed by the commissioner of taxation and finance in the same manner as the other taxes imposed pursuant to the authority of this article, and all of the provisions of this article, including section thirteen hundred ten of this article, shall apply to the additional tax authorized by this section.

§ 1304-C. Filing fees. (a) In addition to any other taxes or fees authorized by this article or any other law, any city imposing the taxes authorized by this article is hereby authorized and empowered to adopt and amend local laws providing that every subchapter K limited liability company (as such term is defined in subsection (b) of section thirteen hundred two of this article), every limited liability company that is a

disregarded entity for federal income tax purposes and every partnership which has any income derived from sources within such city, determined in accordance with the applicable rules of section six hundred thirty-one of this chapter as in the case of a state nonresident individual (except that in making that determination any references in section six hundred thirty-one of this chapter to "New York source" or "New York sources" shall be read as references to "New York city source" or "New York city sources" and any references in that section to "this state" or "the state" shall be read as references to "this city" or "the city"), shall within thirty days after the last day of the taxable year make a payment of a filing fee. The amount of the filing fee shall be the amount determined under paragraph three of subsection (c) of section six hundred fifty-eight of this chapter, except that in making that determination any references in that section to "New York source gross income" must be read as reference to "New York city source gross income". Any local law imposing the filing fee authorized by this section shall provide that where the filing fee is not timely paid, it shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the taxes imposed pursuant to the authority of this article, and for these purposes any reference in the local law imposing those taxes to the taxes imposed by that local law shall be deemed also to refer to the filing fee imposed pursuant to the authority of this section.

(b) Any local law imposing the filing fee authorized by this section shall provide that every partnership having any income derived from city sources, determined in accordance with the applicable rules of section six hundred thirty-one of this chapter as in the case of a state nonresident individual (except that in making such determination any references in such section to "New York source" or "New York sources" shall be read as references to "New York city source" or "New York city sources" and any references in such section to "this state" or "the state" shall be read as references to "this city" or "the city"), shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the commissioner may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year except that the due date for

the return of a partnership consisting entirely of nonresident noncitizens shall be the date prescribed for the filing of its federal partnership return for the taxable year. For purposes of this subsection, "taxable year" means a year or a period which would be a taxable year of the partnership if it were subject to the taxes imposed under the authority of this article.

(c) Except as otherwise provided in this section, any filing fee imposed pursuant to the authority of this section shall be administered and collected by the commissioner in the same manner as the filing fee imposed by paragraph three of subsection (c) of section six hundred fifty-eight of this chapter, and shall be deposited and disposed of in the same manner as taxes pursuant to the provisions of section thirteen hundred thirteen of this article.

(d) Any local law imposing the filing fee authorized by this section shall apply to taxable years beginning on or after the ninetieth day after the effective date of this section.

§ 1304-D. Imposition of tax. Notwithstanding any provision of law to the contrary, in lieu of the tax tables provided in section thirteen hundred four of this article, any city imposing the taxes authorized by section thirteen hundred one of this article is hereby authorized and empowered to adopt and amend local laws to impose the rates set forth in the tax tables provided in this section. Provided, however, if any such city adopts a local law to impose tax at the rates set forth in this section, the authorization granted to such city to impose an additional tax by section thirteen hundred four-B of this article shall be suspended while such local law is in effect.

(a) Rate of tax. A tax imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subsection (b) of section thirteen hundred six of this article and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

If the city taxable income is:	The tax is:
Not over \$21,600	2.907% of the city taxable income
Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over \$21,600
Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over \$45,000
Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over \$90,000
Over \$150,000 but not over \$500,000	\$5,260 plus 4.05% of excess over \$150,000
Over \$500,000	\$19,435 plus 4.45% of excess over \$500,000

(B) For taxable years beginning in two thousand four:

If the city taxable income is:	The tax is:
Not over \$21,600	2.907% of the city taxable income
Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over \$21,600
Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over \$45,000
Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over \$90,000
Over \$150,000 but not over \$500,000	\$5,260 plus 4.175% of excess over \$150,000
Over \$500,000	\$19,872 plus 4.45% of excess over \$500,000

(C) For taxable years beginning in two thousand three:

If the city taxable income is:	The tax is:
Not over \$21,600	2.907% of the city taxable income
Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over \$21,600
Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over \$45,000
Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over \$90,000
Over \$150,000 but not over \$500,000	\$5,260 plus 4.25% of excess over \$150,000

Over \$500,000	\$20,135 plus 4.45% of excess over \$500,000
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(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

If the city taxable income is:	The tax is:
Not over \$14,400	2.907% of the city taxable income
Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over \$14,400
Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over \$30,000
Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over \$60,000
Over \$125,000 but not over \$500,000	\$4,418 plus 4.05% of excess over \$125,000
Over \$500,000	\$19,606 plus 4.45% of excess over \$500,000

(B) For taxable years beginning in two thousand four:

If the city taxable income is:	The tax is:
Not over \$14,400	2.907% of the city taxable income
Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over \$14,400
Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over \$30,000
Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over \$60,000
Over \$125,000 but not over \$500,000	\$4,418 plus 4.175% of excess over \$125,000
Over \$500,000	\$20,075 plus 4.45% of excess over \$500,000

(C) For taxable years beginning in two thousand three:

If the city taxable income is:	The tax is:
Not over \$14,400	2.907% of the city taxable income
Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over \$14,400
Over \$30,000 but not	\$970 plus 3.591% of excess

over \$60,000	over \$30,000
Over \$60,000 but not	\$2,047 plus 3.648% of excess
over \$125,000	over \$60,000
Over \$125,000 but not	\$4,418 plus 4.25% of excess
over \$500,000	over \$125,000
Over \$500,000	\$20,356 plus 4.45% of excess
	over \$500,000

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subsection (b) of section thirteen hundred six of this article or a city resident head of a household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

If the city taxable income is:	The tax is:
Not over \$12,000	2.907% of the city taxable income
Over \$12,000 but not	\$349 plus 3.534% of excess
over \$25,000	over \$12,000
Over \$25,000 but not	\$808 plus 3.591% of excess
over \$50,000	over \$25,000
Over \$50,000 but not	\$1,706 plus 3.648% of excess
over \$100,000	over \$50,000
Over \$100,000 but not	\$3,530 plus 4.05% of excess
over \$500,000	over \$100,000
Over \$500,000	\$19,730 plus 4.45% of excess
	over \$500,000

(B) For taxable years beginning in two thousand four:

If the city taxable income is:	The tax is:
Not over \$12,000	2.907% of the city taxable income
Over \$12,000 but not	\$349 plus 3.534% of excess
over \$25,000	over \$12,000
Over \$25,000 but not	\$808 plus 3.591% of excess
over \$50,000	over \$25,000
Over \$50,000 but not	\$1,706 plus 3.648% of excess

over \$100,000	over \$50,000
Over \$100,000 but not	\$3,530 plus 4.175% of excess
over \$500,000	over \$100,000
Over \$500,000	\$20,230 plus 4.45% of excess
	over \$500,000

(C) For taxable years beginning in two thousand three:

If the city taxable income is:	The tax is:
Not over \$12,000	2.907% of the city taxable income
Over \$12,000 but not	\$349 plus 3.534% of excess
over \$25,000	over \$12,000
Over \$25,000 but not	\$808 plus 3.591% of excess
over \$50,000	over \$25,000
Over \$50,000 but not	\$1,706 plus 3.648% of excess
over \$100,000	over \$50,000
Over \$100,000 but not	\$3,530 plus 4.25% of excess
over \$500,000	over \$100,000
Over \$500,000	\$20,530 plus 4.45% of excess
	over \$500,000

(b) Tax table benefit recapture. For taxable years beginning after two thousand two and before two thousand six, there is hereby imposed a supplemental tax in addition to the tax imposed under subsection (a) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsection. The supplemental tax shall be an amount equal to the sum of the tax table benefits in paragraphs one and two of this subsection multiplied by their respective fractions in such paragraphs provided, however, that paragraph one of this subsection shall not apply to taxpayers who are not subject to the second highest rate of tax.

(1) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a) of this section not subject to the second highest rate of tax for the taxable year multiplied by such rate and (ii) the second highest dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subsection (a)

of this section.

(B) The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred fifty thousand dollars and the denominator is fifty thousand dollars.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six.

(2) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a) of this section not subject to the highest rate of tax for the taxable year multiplied by such rate and (ii) the highest dollar denominated tax set forth in the tax table applicable to the taxable year in subsection (a) of this section less the sum of the tax table benefits in paragraph one of this subsection.

(B) For such taxpayers with adjusted gross income over five hundred thousand dollars, the fraction is one. Provided, however, that the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax table in subsection (a) of this section multiplied by the taxpayer's taxable income.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six.

§ 1305. City resident and city nonresident defined. For purposes of any tax imposed pursuant to the authority of this article:

(a) City resident individual. A city resident individual means an individual:

(1) who is domiciled in the city wherein the tax is imposed, unless (A) the taxpayer maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or (B) (i) within any period of five hundred forty-eight consecutive days the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred

forty-eight consecutive days the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are not present in the city for more than ninety days, and (iii) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section thirteen hundred seven, and which period is contained within the period of five hundred forty-eight consecutive days, the taxpayer is present in the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that period of less than twelve months bears to five hundred forty-eight, or

(2) who maintains a permanent place of abode in such city and spends in the aggregate more than one hundred eighty-three days of the taxable year in such city, whether or not domiciled in this city for any portion of the taxable year, unless such individual is in active service in the armed forces of the United States.

(b) City nonresident individual. A city nonresident individual means an individual who is not a resident of such city or the state of New York.

(c) City resident estate or trust. A city resident estate or trust means:

(1) the estate of a decedent who at his death was domiciled in such city,

(2) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in such city, or

(3) a trust, or a portion of a trust, consisting of the property of:

(A) a person domiciled in such city at the time such property was

transferred to the trust, if such trust or portion of a trust was then

irrevocable, or if it was then revocable and has not subsequently

become irrevocable; or

(B) a person domiciled in such city at the time such trust or

portion of a trust became irrevocable, if it was revocable when such

property was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(d) City nonresident estate or trust. A city nonresident estate or trust means an estate or trust which is not a resident of such city.

§ 1306. Returns and liabilities. (a) General. On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under a city tax imposed pursuant to the authority of this article shall be made and filed by or for every city resident individual, estate or trust required to file a New York state personal income tax (including a city separate tax on the ordinary income portion of lump sum distributions) return for the taxable year.

(b) Husband and wife. (1) If the New York state personal income tax liability of husband and wife is determined on a separate return, their city personal income tax liabilities and returns shall be separate.

(2) If the New York state personal income tax liabilities of husband and wife (other than a husband and wife described in paragraph three) are determined on a joint return, they shall file a joint city personal income tax return, and their tax liabilities shall be joint and several except as provided in paragraph five of this subsection, section six hundred fifty-four and subsection (e) of section six hundred eighty-five of this chapter.

(3) If either husband or wife is a city resident and the other is a city nonresident, and their New York state personal income tax liabilities are determined on a joint return:

(A) they may elect to file a joint city personal income tax return as if both were residents, in which case their city personal income tax liabilities shall be joint and several except as provided in paragraph

five of this subsection, section six hundred fifty-four and subsection (e) of section six hundred eighty-five of this chapter, or

(B) the resident spouse may elect to file a separate city personal income tax return, in which case his city personal income tax liability shall be determined as if he were filing a separate New York state personal income tax return.

(5) If a joint return has been made under this subsection for a taxable year and only one spouse is liable for past-due support or an amount of a default in repayment of a guaranteed student, state university or city university loan of which the state tax commission has been notified pursuant to section one hundred seventy-one-c, one hundred seventy-one-d or one hundred seventy-one-e of this chapter, as the case may be, then an overpayment and interest thereon shall be credited against such past-due support or such amount of a default in repayment of a guaranteed student, state university or city university loan, unless the spouse not liable for such past-due support or such amount of a default in repayment of a guaranteed student, state university or city university loan demands, on a declaration made in accordance with regulations or instructions prescribed by the state tax commission, that the portion of the overpayment and interest attributable to such spouse not be credited against the past-due support or amount of a default in repayment of a guaranteed student, state university or city university loan owed by the other spouse. Upon such demand, the state tax commission shall determine the amount of the overpayment attributable to each spouse in accordance with regulations prescribed by the state tax commission and credit only that portion of the overpayment and interest thereon attributable to the spouse liable for past-due support or amount of a default in repayment of a guaranteed student, state university or city university loan against such past-due support or such amount of a default in repayment of a guaranteed student, state university or city university loan.

(6) The commissioner shall clearly alert married taxpayers, on all appropriate publications and instructions, that their liability for tax will be joint and several if they file joint income tax returns. The commissioner shall include notice of an individual's right to relief from joint and several liability pursuant to section six hundred fifty-four of this chapter in the disclosure of rights statement

required by section three thousand four of this chapter and in any notice regarding collection of tax due with respect to a liability on a joint return.

(c) Decedents. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(d) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

§ 1307. Change of resident status. (a) General. If an individual changes his status during his taxable year from city resident to city nonresident, or from city nonresident to city resident, he shall file one return as a city resident for the portion of the year during which he is a city resident, and a return under a local law for the portion of the year during which he is a city nonresident, subject to such exceptions as the state tax commission may prescribe by regulation. Such return shall be due at the same time as the return for the portion of the year during which such individual is a city resident.

(b) The city taxable income for the portion of the year during which an individual described in subsection (a) is a city resident individual shall be determined, except as provided in subsection (c), under the rules provided in section six hundred thirty-eight of this chapter, as if he were computing his New York taxable income and his taxable year for New York state personal income tax purposes were limited to the period of his city resident status.

(c) When an individual changes his status from city resident to city nonresident, or from city nonresident to city resident, he shall, regardless of his method of accounting, accrue any items of income, gain, loss, deduction or ordinary income portion of a lump sum distribution accruing prior to the change of status, with the applicable modifications and adjustments to federal adjusted gross income and itemized deductions under sections six hundred twelve and six hundred fifteen, if not otherwise properly includible or allowable for New York income tax purposes for such period or a prior taxable year under his method of accounting. Such accruals shall be made as provided in section six hundred thirty-nine of this chapter.

(d) Trusts. If the status of a trust changes during its taxable year from city resident to city nonresident, or from city nonresident to city resident, the fiduciary shall file one return as a city resident trust for the portion of the year during which the trust is a city resident trust, and a return under a local law for the portion of the year during which the trust is a city nonresident trust, subject to such exceptions as the state tax commission may prescribe by regulations.

(e) The city taxable income for the portion of the year during which a trust described in subsection (d) is a city resident trust shall be determined, except as provided in subsection (c), under the rules provided in section six hundred thirty-eight of this chapter, as if its New York taxable income were being computed and its taxable year for New York state personal income tax purposes were limited to the period of its city resident status.

(f) When the status of a trust changes from city resident to city nonresident, or from city nonresident to city resident, it shall, regardless of its method of accounting, accrue any items of income, gain, loss or deduction accruing prior to the change of status. Such accruals shall be made as provided in section six hundred thirty-nine of this chapter.

§ 1309. Requirement of withholding tax from wages. A tax imposed pursuant to the authority of this article shall provide that the tax shall be withheld from the wages of city residents in the same manner and subject to the same requirements, to the greatest extent possible,

as provided in sections six hundred seventy-one through six hundred seventy-eight of this chapter except that the term "aggregate amount" contained in paragraphs one, two and three of subsection (a) of section six hundred seventy-four of this chapter shall mean the aggregate of the aggregate amounts of New York state personal income tax, city personal income tax on residents and city earnings tax on nonresidents authorized pursuant to article two-E of the general city law required to be deducted and withheld and provided, however, that the provisions of such paragraphs shall not be applicable to employer's returns required to be filed with respect to taxes required to be deducted and withheld during the calendar year nineteen hundred seventy-six, but such returns shall be required to be filed with the state tax commission at the times and in the manner provided for in subdivision (a) of section fifty-four contained in section twenty-five-a of the general city law except the term "administrator" in such subdivision shall be read as "state tax commission."

§ 1310. Credits against tax. (a) Credit to trust beneficiary receiving accumulation distribution. A beneficiary of a trust who is subject to a city personal income tax imposed pursuant to the authority of this article and whose New York adjusted gross income under article twenty-two of this chapter includes all or part of an accumulation distribution by such trust, as defined in section six hundred sixty-five of the internal revenue code, shall be allowed a credit against the tax otherwise due under such city personal income tax for all or a proportionate part of any tax paid by the trust under such tax or under any prior local law of the city for any preceding taxable year which would not have been payable if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in section six hundred sixty-six of the internal revenue code. The credit under this subsection shall not reduce the tax otherwise due from the beneficiary under such city personal income tax to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his New York adjusted gross income as defined in section six hundred twelve of this chapter.

(b) Credit for tax withheld. Wages upon which tax is required to be

withheld shall be taxable under a city personal income tax as if no withholding were required, but any amount of tax actually deducted and withheld under such tax in any calendar year shall be deemed to have been paid to the state tax commission on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the state tax commission.

(c) Credit relating to net capital gain. For taxable years beginning in nineteen hundred eighty-seven, a credit against the city personal income tax determined in accordance with section thirteen hundred four shall be allowed. The amount of the credit shall be one-half of one percent of net capital gain includible in city adjusted gross income for the taxable year. The credit allowed by this section shall not exceed the tax determined in accordance with section thirteen hundred four, reduced by the credits permitted under subsections (a) and (d) of this section.

(d) Household credit. (1) For taxable years beginning after nineteen hundred eighty-six, a credit against the city personal income tax determined in accordance with section thirteen hundred four shall be allowed. The credit, computed as described in paragraph two of this subsection, shall not exceed the tax determined in accordance with section thirteen hundred four reduced by the credit permitted under subsection (a) of this section.

(2) (A) For any individual who is not married nor the head of a household nor a surviving spouse, the amount of the credit shall be determined in accordance with the following table:

If household gross
income is:

The credit shall be:

	For taxable years beginning after 1986 and before 1996	For taxable years beginning after 1995
Not over \$7,500	\$15	\$15
Over \$7,500 but not over \$10,000	\$10	\$15
Over \$10,000 but not over \$12,500	\$ 0	\$10

(B) For any husband and wife, head of household or surviving spouse, the amount of the credit shall be determined by multiplying the number of exemptions for which the taxpayer (or in the case of a husband and wife, taxpayers) is entitled to a deduction for the taxable year for federal income tax purposes under subsections (b) and (c) of section one hundred fifty-one of the internal revenue code by the credit factor for the taxable year as specified in the following table:

If household gross
income is:

The credit factor is:

	For taxable years beginning in			For taxable years
	1987	1988	1989 through 1995	beginning after
				1995
Not over \$12,500	\$30	\$50	\$50	\$30
Over \$12,500 but not				
over \$15,000	\$20	\$40	\$50	\$30
Over \$15,000 but not				
over \$17,500	\$10	\$20	\$25	\$25
Over \$17,500 but not				
over \$20,000	\$ 0	\$15	\$15	\$15
Over \$20,000 but not				
over \$22,500	\$ 0	\$ 0	\$ 0	\$10

(3) For purposes of this subsection:

(A) "Household gross income" shall mean the aggregate federal adjusted gross income of a household, as the term household is defined in subparagraph (B) of this paragraph, for the taxable year.

(B) "Household" means a husband and wife, a head of household, a surviving spouse, or an individual who is not married nor the head of a household nor a surviving spouse nor a taxpayer with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(C) "Household gross income of a husband and wife" shall be the aggregate of their federal adjusted gross incomes for the taxable year

irrespective of whether joint or separate city income tax returns are filed. Provided, however, that a husband or wife who is required to file a separate city income tax return shall be permitted one-half the credit otherwise allowed his or her household, except as limited by paragraph one of this subsection.

(D) "Household gross income" shall be computed in all cases as if each member of the household were a resident for the entire taxable year.

(E) If a taxpayer changes his status during his taxable year from resident to nonresident, or from nonresident to resident, the household credit shall be prorated according to the number of months in the period of residence. In the case of a husband and wife, if either or both changes his or her status from resident to nonresident or from nonresident to resident and separate returns are filed, the credit computed for the entire year shall be divided first as provided in subparagraph (C) of this paragraph and then prorated according to the number of months in the period of residence.

* (e) State school tax reduction credit. (1) For taxable years beginning after nineteen hundred ninety-seven, and ending before two thousand sixteen, a state school tax reduction credit shall be allowed as provided in the following tables. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess. For purposes of this subsection, no credit shall be granted to an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(2) The amount of the credit under this paragraph shall be determined based upon the taxpayer's income as defined in subparagraph (ii) of paragraph (b) of subdivision four of section four hundred twenty-five of the real property tax law. For the purposes of this paragraph, any taxpayer under subparagraphs (A) and (B) of this paragraph with income of more than two hundred fifty thousand dollars shall not receive a credit.

Beginning in the two thousand ten tax year and each tax year

thereafter through two thousand fifteen, the "more than two hundred fifty thousand dollar" income limitation shall be adjusted by applying the inflation factor set forth herein, and rounding each result to the nearest multiple of one hundred dollars. The department shall establish the income limitation to be associated with each subsequent tax year by applying the inflation factor set forth herein to the figures that define the income limitation that were applicable to the preceding tax year, as determined pursuant to this subsection, and rounding each result to the nearest multiple of one hundred dollars. Such determination shall be made no later than March first, two thousand ten and each year thereafter.

(A) Married individuals filing joint returns and surviving spouses. In the case of a husband and wife who make a single return jointly and of a surviving spouse:

For taxable years beginning:	The credit shall be:
in 2001-2005	\$125
in 2006	\$230
in 2007-2008	\$290
in 2009 - 2015	\$125

(B) All others. In the case of an unmarried individual, a head of a household or a married individual filing a separate return:

For taxable years beginning:	The credit shall be:
in 2001-2005	\$62.50
in 2006	\$115
in 2007-2008	\$145
in 2009 - 2015	\$62.50

(4) Husband and wife who make a joint return. If a husband and wife make a single return jointly, the credit under this subsection shall be determined under paragraph two of this subsection, if either of them has attained the age of sixty-five on or before the close of the taxable year.

(5) Part-year residents. If a taxpayer changes status during the taxable year from resident to nonresident, or from nonresident to resident, the state school tax reduction credit shall be prorated according to the number of months in the period of residence.

* NB There are 2 sub§ (e)'s

* (e) Credit for city of New York unincorporated business tax paid.

(1) Notwithstanding any other provision of law to the contrary, any city imposing a tax under this article is hereby authorized and empowered to adopt and amend local laws for any taxable year beginning after nineteen hundred ninety-seven, as specified in such local laws, providing for a credit as provided in paragraph two of this subsection against the taxes imposed pursuant to the authority granted by section thirteen hundred one of this article on the city taxable income determined pursuant to sections thirteen hundred four, thirteen hundred four-A and thirteen hundred four-B of this article and on the ordinary income portion of a lump sum distribution determined pursuant to section thirteen hundred one-B of this article, to any city resident individual, estate or trust whose city adjusted gross income includes income, gain, loss or deductions from one or more unincorporated businesses conducted by such city resident individual, estate or trust on which a tax is imposed by chapter five of title eleven of the administrative code of the city of New York, or a distributive share of income, gain, loss and deductions of, or guaranteed payments from, one or more partnerships on which a tax is imposed by such chapter. Any such local laws may contain provisions to ensure that such credit shall not reduce the tax paid by a city resident below that which would be paid by such city resident if such city resident were a city nonresident.

(2) (A) Subject to the limitation set forth in subparagraph (B) of this paragraph, the credit allowed to a taxpayer for a taxable year shall be equal to all or a portion of the amount determined in paragraph three of this subsection, provided, however, such portion shall not be less than:

(i) If the city taxable income is forty-two thousand dollars or less, sixty-five percent of the amount determined in paragraph three of this subsection.

(ii) If the city taxable income is greater than forty-two thousand dollars but not greater than one hundred forty-two thousand dollars, a percentage of the amount determined in paragraph three of this subsection to be determined by subtracting from sixty-five percent, one tenth of a percentage point (.001) for every increment of two hundred dollars, or fractional part thereof, of city taxable income in excess of forty-two thousand dollars.

(iii) If the city taxable income is greater than one hundred forty-two

thousand dollars, fifteen percent of the amount determined in paragraph three of this subsection.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subsection shall not exceed the sum of the taxes that would otherwise be imposed on such taxpayer for such taxable year pursuant to the authority granted by section thirteen hundred one of this article on the city taxable income determined pursuant to sections thirteen hundred four, thirteen hundred four-A and thirteen hundred four-B of this article and on the ordinary income portion of a lump sum distribution determined pursuant to section thirteen hundred one-B of this article, reduced by the credits allowed to such taxpayer pursuant to subsections (a), (c) and (d) of this section.

(3) Subject to the provisions of subparagraph (C) of this paragraph, the amount determined in this paragraph is the sum of:

(A) for each unincorporated business conducted by the taxpayer, the tax imposed by chapter five of title eleven of the administrative code of the city of New York on such unincorporated business for its taxable year ending with the taxable year of the taxpayer and paid by the unincorporated business; and

(B) for each unincorporated business in which the taxpayer is a partner, the product of:

(i) the sum of (I) the tax imposed by chapter five of title eleven of the administrative code of the city of New York on such unincorporated business for its taxable year ending within or with the taxable year of the partner and paid by the unincorporated business and (II) the amount of any credit or credits taken by the unincorporated business under subdivision (j) of section 11-503 of the administrative code of the city of New York for its taxable year ending within or with the taxable year of the partner; and

(ii) a fraction, the numerator of which is the net total of the partner's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total (as separately

determined for each partner) is greater than zero.

(C) For a taxpayer that changes its status from a city resident to a city nonresident or from a city nonresident to a city resident during the taxable year:

(i) the amount determined in subparagraph (A) of this paragraph shall be, with respect to each unincorporated business conducted by the taxpayer, the tax imposed by chapter five of title eleven of the administrative code of the city of New York on such unincorporated business for its taxable year ending with the taxable year of the taxpayer and paid by the unincorporated business, multiplied by a fraction, the numerator of which is that portion of the income, gain, loss and deductions of the unincorporated business included in the taxpayer's city adjusted gross income for the portion of the taxable year during which the taxpayer was a city resident, and the denominator of which is the total, for such taxable year, of the income, gain, loss and deductions of the unincorporated business, and

(ii) the amount determined in clause (ii) of subparagraph (B) of this paragraph shall be a fraction, the numerator of which is that portion of the taxpayer's net total distributive share of income, gain, loss and deductions of, and that portion of guaranteed payments from, the unincorporated business included in the taxpayer's city adjusted gross income for the portion of the taxable year during which the taxpayer was a city resident, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business, for whom or which such net total (as separately determined for each partner) is greater than zero.

(4) No local law enacted pursuant to the authority of this subsection shall be effective unless a certified copy of such local law is mailed by registered mail to the state department of taxation and finance at its office in Albany at least fifteen days prior to the date it is to become effective. However, the state department of taxation and finance may waive and reduce such fifteen-day minimum notice requirement to a mailing of such certified copy by registered mail within such period if it deems such action to be consistent with its duties under this article.

* NB There are 2 sub§ (e)'s

(f) Earned income tax credit. (1) Notwithstanding any other provision of law to the contrary, any city having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws granting in any such city, for taxable years beginning after two thousand three, a credit against the city personal income tax equal to five percent of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, and, for taxable years beginning after two thousand twenty-one, a credit against the city personal income tax equal to a percentage, determined pursuant to subparagraphs (A) through (I) of this paragraph, of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. For purposes of this paragraph, "adjusted gross income" means New York adjusted gross income as determined pursuant to article twenty-two of this chapter. The percentage shall be:

(A) thirty percent, where the taxpayer's adjusted gross income for such taxable year is less than \$5,000;

(B) thirty percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of the taxpayer's adjusted gross income for such taxable year in excess of \$4,999, where such taxpayer's adjusted gross income for such taxable year is equal to or greater than \$5,000 and less than \$7,500;

(C) twenty-five percent, where the taxpayer's adjusted gross income for such taxable year is equal to or greater than \$7,500 and less than \$15,000;

(D) twenty-five percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of the taxpayer's adjusted gross income for such taxable year in excess of \$14,999, where such taxpayer's adjusted gross income for such taxable year is equal to or greater than \$15,000 and less than \$17,500;

(E) twenty percent, where the taxpayer's adjusted gross income for such taxable year is equal to or greater than \$17,500 and less than \$20,000;

(F) twenty percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of the taxpayer's adjusted gross income for such taxable year in excess of \$19,999, where such taxpayer's adjusted gross income for such taxable year is equal to or greater than

\$20,000 and less than \$22,500;

(G) fifteen percent, where the taxpayer's adjusted gross income for such taxable year is equal to or greater than \$22,500 and less than \$40,000;

(H) fifteen percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of the taxpayer's adjusted gross income for such taxable year in excess of \$39,999, where such taxpayer's adjusted gross income for such taxable year is equal to or greater than \$40,000 and less than \$42,500; and

(I) ten percent where the taxpayer's adjusted gross income for such taxable year is equal to or greater than \$42,500.

(2) In the case of a resident taxpayer, the credit provided by local law adopted pursuant to this subsection shall be allowed against the taxes authorized by this article for the taxable year reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess.

(3) If a taxpayer changes his or her status during the taxable year from city resident to city nonresident, or from city nonresident to city resident, the credit determined under this subsection shall be limited to the amount determined by multiplying the amount of such credit by a fraction, the numerator of which is such taxpayer's city adjusted gross income, as defined in chapter seventeen of title eleven of the administrative code of the city of New York, for the period of residence, and the denominator of which is such taxpayer's city adjusted gross income determined as if he or she were a city resident for the entire taxable year. City adjusted gross income shall be adjusted as provided in section 11-1754 of the administrative code of the city of New York. The credit as so limited shall be applied as provided in paragraph two of this subsection.

(4) Subject to the provisions of paragraph three of this subsection, in the case of a husband and wife who file a joint return, but who are required to determine their city personal income taxes separately, the credit authorized pursuant to this subsection may be applied against the tax of either or divided between them as they may elect. In the case of a husband and wife who are not required to file a federal return, the

credit under this subsection shall be allowed only if such taxpayers file a joint city personal income tax return.

(5) A local law enacted pursuant to this subsection shall be applicable with respect to any taxable year only if it has been enacted on or before the date that is forty-five days after the effective date of this subsection and for taxable years subsequent to taxable year two thousand four, on or before July thirty-first of such taxable year. A certified copy of such local law shall be mailed by registered mail to the state department of taxation and finance at its office in Albany within fifteen days of its enactment. However, the state department of taxation and finance may allow additional time for such certified copy to be mailed if it deems such action to be consistent with its duties under this article.

(6) If the department determines that the taxpayer is eligible to receive the credit provided under this subsection but has not claimed such credit on his or her return, the department shall compute and issue any refund for the allowable credit amount provided under this subsection. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this chapter, provided, however, that no interest shall be paid thereon.

(g) Credit for city pass-through entity tax. (1) A taxpayer who is a partner or member of an electing city partnership and a taxpayer shareholder of an electing city resident S corporation subject to tax under article twenty-four-B of this chapter shall be entitled to a credit against the tax imposed pursuant to the authority of this article as provided in this subsection. For purposes of this subsection, the terms "electing city partnership," "electing city resident S corporation," "city pass-through entity tax," and "direct share of city pass-through entity tax" shall have the same meanings provided in article twenty-four-B of this chapter.

(2) The amount of the credit shall be equal to the partner's, member's or shareholder's direct share of the city pass-through entity tax.

(3) If a taxpayer is a partner, member or shareholder in more than one electing city partnership and/or electing city resident S corporation that is subject to tax pursuant to article twenty-four-B of this chapter, the amount of the credit of such taxpayer shall be equal to the

sum of the amounts of such credits calculated pursuant to paragraph two of this subsection with regard to each entity in which such taxpayer has a direct ownership interest.

(4) If the amount of the credit allowable pursuant to this subsection for any taxable year exceeds the tax due for such year pursuant to this article, the excess amount shall be treated as an overpayment, to be credited or refunded, without interest.

(5) Limitation on credit. No credit shall be allowed to a taxpayer under this subsection unless the electing city partnership or electing city resident S corporation provided sufficient information to identify such taxpayer on its city pass-through entity tax return as required under paragraph two of subsection (c) of section eight hundred seventy-two of this chapter for an electing city partnership or paragraph two of subsection (d) of section eight hundred seventy-two of this chapter for an electing city resident S corporation. The credit allowed to a taxpayer under this subsection shall not exceed the direct share of city pass-through entity tax reported by such electing city partnership or electing city resident S corporation attributable to such taxpayer on such electing city partnership or electing city resident S corporation's return filed pursuant to section eight hundred seventy-two of this chapter.

(h) Credit for certain taxpayers with incomes below certain thresholds. (1) Notwithstanding any other provision of law to the contrary, for taxable years beginning on or after January first, two thousand twenty-five, a credit shall be allowed to a taxpayer against the tax imposed pursuant to the authority of this article in an amount equal to the tax otherwise due under this article for such taxable year, reduced by all the credits permitted by this article for such taxable year, if:

(A) such taxpayer is entitled to a deduction for such taxable year under subsection (c) of section one hundred fifty-one of the internal revenue code;

(B) such taxpayer meets the following income thresholds for such taxable year:

(i) for city taxpayers who filed a resident income tax return as married taxpayers filing jointly or a qualified surviving spouse:

If the number of	Income no greater than:
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dependents is:

1	\$36,789
2	\$46,350
3	\$54,545
4	\$61,071
5	\$68,403
6	\$75,204
7 or more	\$91,902

(ii) for city taxpayers who filed a resident income tax return as a single taxpayer, married taxpayer filing a separate return, or head of household:

If the number of dependents is:	Income no greater than:
1	\$31,503
2	\$36,824
3	\$46,512
4	\$53,711
5	\$59,928
6	\$65,712
7	\$74,565
8 or more	\$88,361

(iii) for any taxable year beginning on or after January first, two thousand twenty-six, the commissioner shall multiply the amounts in this subparagraph by one plus the cost-of-living adjustment, which shall be the percentage by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year two thousand twenty-four;

(C) such taxpayer is not allowed a credit pursuant to:

(i) subsection (a) of section eight hundred sixty-three of this chapter against the tax imposed pursuant to article twenty-two of this chapter; or

(ii) subsection (a) of section eight hundred seventy of this chapter against the tax imposed pursuant to the authority of article thirty of this chapter; and

(D) such taxpayer does not report disqualified income in excess of ten thousand dollars in the taxable year, as defined in subsection (i) of section thirty-two of the internal revenue code.

(2) Where the income of a taxpayer exceeds the amount indicated in subparagraph (B) of paragraph one of this subsection for such taxpayer by five thousand dollars or less, and such taxpayer satisfies subparagraph (A) and subparagraphs (C) and (D) of paragraph one of this subsection, a credit shall be allowed in the amount determined by multiplying: (A) the tax otherwise due under this article for such taxable year reduced by all the credits permitted by this article for such taxable year by (B) a fraction the numerator of which is five thousand dollars minus the amount by which such income exceeds the amount indicated in subparagraph (B) of paragraph one of this subsection and the denominator of which is five thousand dollars.

(3) For purposes of this subsection:

(A) "Consumer price index" means the most recent consumer price index for all-urban consumers published by the United States department of labor. The consumer price index for any calendar year shall be the average of the consumer price index as of the close of the twelve-month period ending on August thirty-first of such calendar year.

(B) "Income" means federal adjusted gross income for the taxable year.

§ 1311. Enforcement with other taxes. (a) If there is assessed a tax under a city income tax imposed pursuant to the authority of this article and there is also assessed a tax or taxes against the same taxpayer pursuant to article twenty-two or articles twenty-two and twenty-three of this chapter or under a local law enacted pursuant to the authority of article two-E of the general city law and payment of a single amount is required under the provisions of this article, such payment shall be deemed to have been made with respect to the taxes so assessed in proportion to the amounts of such taxes due, including tax, penalties, interest and additions to tax.

(b) If the state tax commission takes action under such article twenty-two or articles twenty-two and twenty-three or under a local law enacted pursuant to the authority of article two-E of the general city law with respect to the enforcement and collection of the tax or taxes assessed under such articles the state tax commission shall, wherever possible, accompany such action with a similar action under similar enforcement and collection provisions of such city income tax.

(c) Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two or articles twenty-two and twenty-three of this chapter and such city income tax.

(d) Whenever the state tax commission takes any action with respect to a deficiency of income tax under article twenty-two or articles twenty-two and twenty-three of this chapter or under a local law enacted pursuant to the authority of article two-E of the general city law, other than the action set forth in subdivision (a) of this section, it may in its discretion accompany such action with a similar action under such city income tax.

§ 1312. Administration, collection and review. (a) Except as otherwise provided in this article, any tax imposed pursuant to the authority of this article shall be administered and collected by the commissioner in the same manner as the tax imposed by article twenty-two of this chapter is administered and collected by the commissioner. All of the provisions of article twenty-two of this chapter relating to or applicable to payment of estimated tax, returns, payment of tax, claim of right adjustment, withholding of tax from wages, employer's statements and returns, employer's liability for taxes required to be withheld and all other provisions of article twenty-two of this chapter relating to or applicable to the administration, collection, liability for and review of the tax imposed by article twenty-two of this chapter, including sections six hundred fifty-two through six hundred fifty-four, sections six hundred fifty-seven through six hundred fifty-nine-a, sections six hundred sixty-one and six hundred sixty-two, sections six hundred seventy-one and six hundred seventy-two, sections six hundred seventy-four through six hundred seventy-eight and sections six hundred eighty-one through six hundred ninety-seven of this chapter, inclusive, shall apply to a tax imposed pursuant to the authority of this article with the same force and effect as if those provisions had been incorporated in full into this article, and had expressly referred to the tax imposed pursuant to the authority of this article, except where inconsistent with a provision of this article. Whenever there is joint

collection of state and city personal income taxes, it shall be deemed that such collections shall represent proportionately the applicable state and city personal income taxes in determining the amount to be remitted to the city.

(b) The state tax commission, in its discretion, may require or permit any or all persons liable for any tax imposed pursuant to the authority of this article to make payments on account of estimated tax and payment of any tax, penalty or interest to such banks, banking housing or trust companies designated by the state tax commission and to file returns with such banks, banking houses or trust companies, as agent of the state tax commission, in lieu of paying a tax imposed pursuant to the authority of this article directly to the state tax commission. However, the state tax commission shall designate only such banks, banking houses or trust companies which are designated by the comptroller as depositories of the state.

(c) Notwithstanding any other provisions of this article, any law imposing a tax pursuant to the authority of this article shall provide that the state tax commission may require:

(1) the filing of any or all of the following:

(A) a combined return which, in addition to the return provided for in section thirteen hundred six, may also include any or both of the returns required to be filed by a resident individual of New York state pursuant to the provisions of section six hundred fifty-one of this chapter and which may be required to be filed by such individual pursuant to any local law enacted pursuant to the authority of section twenty-five-m of the general city law, and

(B) a combined employer's return which, in addition to the employer's return provided for by any law enacted pursuant to the authority of this article, may also include any or both of the employer's returns required to be filed by the same employer pursuant to the provisions of section six hundred seventy-four of this chapter and required to be filed by such employer pursuant to any local law enacted under the authority of section twenty-five-m of the general city law, and

(C) a combined partnership return which, in addition to the partnership return provided for by any law enacted pursuant to the authority of this article, may also include either or both of the partnership returns required to be filed by a partnership pursuant to

the provisions of paragraph one of subsection (c) of section six hundred fifty-eight of this chapter and required to be filed by such partnership pursuant to any local law enacted under the authority of section twenty-five-m of the general city law, and

(2) where a combined return or employer's return is required, and with respect to the payment of estimated tax, the state tax commission may also require the payment to it of a single amount which shall equal the total of the amounts (total taxes less any credits or refunds) which would have been required to be paid with the returns or employer's returns or in payment of estimated tax pursuant to the provisions of article twenty-two of the tax law, and the provisions of local laws enacted under the authority of this article and section twenty-five-m of the general city law.

§ 1313. Deposit and disposition of revenues. (a) All revenue collected by the commissioner from the taxes imposed pursuant to the authority of this article or former article two-E of the general city law shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for the city of New York or the New York city transitional finance authority, as their interests may appear pursuant to this section. Such deposits shall be kept in trust and separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the commissioner.

(b) The comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds in respect to the taxes imposed pursuant to the authority of this article or former article two-E of the general city law and for reasonable costs of the commissioner in administering, collecting and distributing such taxes and the tax imposed pursuant to article twenty-four-B of this chapter, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under any law enacted pursuant to the authority of this article or former article two-E of the general city law.

(c) Subject to the provisions of subsection (g) of this section, the

comptroller, after reserving such refund fund and such costs shall, commencing on or before the fifteenth day of each month, pay to the New York city transitional finance authority on a daily basis the balance of taxes imposed pursuant to the authority of this article or former article two-E of the general city law to be applied by the authority, in the following order of priority: first pursuant to the authority's contracts with bondholders, then to pay the authority's operating expenses not otherwise provided for, and then pursuant to the authority's agreements with the city, which agreements shall require the authority to transfer the balance of such taxes not required to meet contractual or other obligations of the authority to the city as frequently as practicable; except that the comptroller shall:

(1) pay to the state department of social services that amount of overpayments of the taxes imposed pursuant to the authority of this article or former article two-E of the general city law and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this chapter;

(2) pay to the New York state higher education services corporation that amount of overpayments of the taxes imposed pursuant to the authority of this article or former article two-E of the general city law and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans pursuant to subdivision five of section one hundred seventy-one-d of this chapter;

(3) pay to the state university of New York or the city university of New York respectively that amount of overpayments of the taxes imposed pursuant to the authority of this article or former article two-E of the general city law and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of state or city university loans pursuant to subdivision six of section one hundred seventy-one-e of this chapter;

(4) notwithstanding any provision of law, credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayments of the taxes imposed pursuant to the authority of this article or former article two-E of the general city

law and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this chapter, provided, however, the comptroller shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this chapter;

(5) pay to the city of New York that amount of overpayments of tax imposed pursuant to the authority of this article and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this chapter; and

(6) pay to a non-obligated spouse that amount of overpayment of tax imposed pursuant to the authority of this article or former article two-E of the general city law and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this chapter and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, and the comptroller shall deduct a like amount which, the comptroller shall pay into the treasury to the credit of the general fund, from amounts subsequently payable to the office of temporary and disability assistance, the state university of New York, the city university of New York, the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment.

(d) The amount deducted under subsection (b) of this section for administering, collecting and distributing such taxes during such monthly period shall be paid by the comptroller into the general fund of the state treasury to the credit of the state purposes account therein.

(e) The first payment to such chief fiscal officer shall be made on or before March fifteenth, nineteen hundred seventy-six, which payment

shall represent the balance of revenue after provision for refund and such reasonable costs, with respect to taxes collected from January first, nineteen hundred seventy-six through February twenty-ninth, nineteen hundred seventy-six. Subsequent payments shall be made on or before April fifteenth, nineteen hundred seventy-six, and on or before the fifteenth day of each succeeding month thereafter, and shall represent the balance of revenue with respect to taxes collected the preceding calendar months.

(f) The amounts so payable under this section shall be certified to the comptroller by the commissioner or the commissioner's delegate, either of whom shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to such chief fiscal officer is more or less than the amount then due such city, the amount of overpayment or underpayment shall be certified to the comptroller by the commissioner or the commissioner's delegate, either of whom shall not be held liable for any inaccuracy in such certificate. The amount of overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments by the comptroller to such chief fiscal officer shall be adjusted by subtracting the amount of any such overpayment from, or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

(g) The balance payable to the New York city transitional finance authority pursuant to this section shall instead be paid to the chief fiscal officer of the city of New York unless and until the comptroller has received from such authority a notice, which shall be conclusive and upon which the comptroller may rely without further inquiry, that such authority has incurred obligations payable by it, whether for borrowed money, operating expenses or otherwise. On and after the date of such notice and until such date as the authority shall have no obligations outstanding, the city shall have no right, title or interest in or to the taxes, except as provided in the authority's agreements with the city.

(h) Notwithstanding any provision of state or local law, ordinance or

resolution to the contrary, if the commissioner of health timely certifies to the commissioner that a city having a population of one million or more which imposes tax pursuant to the authority of this article properly exercised its option pursuant to section two of the chapter of the laws of two thousand five which added this subdivision that such city be reimbursed for medical assistance expenditures as provided in such section two of such chapter, the commissioner shall make and certify the calculations and the comptroller shall, on the fifteenth day of each month, starting in January, two thousand eight, intercept and pay monthly amounts of revenue from taxes imposed in such a city pursuant to the authority of this article, as provided in subdivision (g) of section twelve hundred sixty-one of this chapter.

ARTICLE 30-A

CITY INCOME TAX SURCHARGE

Section 1320. Short title.

- 1321. Authority to impose city income tax surcharge.
- 1322. Persons subject to the city income tax surcharge.
- 1323. Net state tax.
- 1325. City resident and city nonresident defined.
- 1326. Returns and liabilities.
- 1327. Change of resident status during year.
- 1329. Requirement of withholding tax from wages.
- 1330. Credit for tax withheld.
- 1331. Enforcement with other taxes.
- 1332. Administration, collection and review.
- 1333. Deposit and disposition of revenues.

§ 1320. Short title. This article shall be known and may be cited as the "city income tax surcharge act".

§ 1321. Authority to impose city income tax surcharge. (a) General. Notwithstanding any other provision of law to the contrary, but subject to the limitations and conditions set forth in this article, any city in

this state having a population of more than one hundred eighty thousand but less than two hundred fifteen thousand inhabitants, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city, for taxable years beginning after nineteen hundred eighty-three and before two thousand twenty-eight, a city income tax surcharge on residents of such city at a rate not to exceed nineteen and one-quarter percent of the net state tax as defined in section thirteen hundred twenty-three of this article, such city income tax surcharge to be administered, collected and distributed by the commissioner as provided for in this article.

(b) Earnings tax on nonresidents requirement. The city income tax surcharge authorized by this article may be imposed only if this chapter authorizes the adoption of a city tax on the earnings of nonresidents and the city imposing the tax authorized by this article also imposes such tax on the earnings of nonresidents.

(c) Effectiveness of local law and filing with commissioner. (i) A local law enacted pursuant to the authority of this section shall go into effect on the first day of January, nineteen hundred eighty-four and shall apply to taxable years beginning on or after such date and before two thousand twenty-eight. Provided, however, no such local law shall be so effective unless such local law is enacted by July thirty-first, nineteen hundred eighty-four and unless a certified copy of such local law is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany by such date. (ii) If the requirements of paragraph (i) of this subsection are not met, a local law enacted pursuant to the authority of this section shall go into effect on the first day of the next succeeding January and shall apply to taxable years beginning on or after such date and before two thousand twenty-eight. Provided, however, no such local law shall be so effective unless such local law is enacted at least ninety days prior to the date it is to become effective and unless a certified copy of such local law is mailed by registered or certified mail to the commissioner at such commissioner's office in Albany by such date. However, the commissioner may waive and reduce such ninety day minimum requirements within a period of not less than thirty days prior to such effective date if such commissioner deems such action to be consistent with such commissioner's duties under this article. (iii) Any amendment of such a

local law enacted pursuant to the authority of this section, which changes the rate of the income tax surcharge on residents, shall take effect on the first day of January in the year in which such amendment is enacted and shall apply to taxable years beginning on or after such date, if such amendment is enacted on or before July thirty-first of the year in which it is to take effect and a certified copy of such amendment is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany by such date. (iv) If the requirements of paragraph (iii) of this subsection are not met, the amendment of such local law shall go into effect on the first day of the next succeeding January and shall apply to taxable years beginning on or after such date, provided that no such amendment shall take effect unless it is enacted at least ninety days prior to the date it is to become effective and a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany by such date. (v) Any amendment to the provisions of article twenty-two of this chapter to the extent that such amendment is applicable to the city income tax surcharge imposed under such local law, shall be deemed to have been incorporated in the analogous provision or provisions of such local law.

(d) Filing of local law with others. Certified copies of such local law shall also be filed with the clerk of the city wherein the tax is imposed, the secretary of state and the state comptroller within thirty days of the date of enactment.

§ 1322. Persons subject to the city income tax surcharge. (a) General. The city income tax surcharge imposed pursuant to the authority of this article shall be imposed for each taxable year on every city resident individual, estate and trust. A taxpayer's taxable year for purposes of a city income tax surcharge imposed pursuant to the authority of this article shall be the same as his taxable year under article twenty-two of this chapter.

(b) Partners and partnerships. A partnership as such shall not be subject to a city income tax surcharge imposed pursuant to the authority of this article. Persons carrying on business as partners shall be liable for such city income tax surcharge only in their separate or

individual capacities. As used in this article, the term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

(c) Associations taxable as corporations. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to a city income tax surcharge imposed pursuant to the authority of this article.

(d) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from any city income tax surcharge imposed pursuant to the authority of this article (regardless of whether subject to federal income tax on unrelated business taxable income).

§ 1323. Net state tax. The net state tax of a city resident individual, estate or trust shall mean the sum of all of the taxes imposed on such individual, estate or trust under article twenty-two of this chapter for the taxable year less the applicable credits (other than the credit for tax withheld) allowed to such individual, estate or trust under such article for the taxable year.

§ 1325. City resident and city nonresident defined. For purposes of any city income tax surcharge imposed pursuant to the authority of this article: (a) City resident individual. A city resident individual means an individual:

(1) who is domiciled in the city wherein the city income tax surcharge is imposed pursuant to the authority of this article, unless (A) the

taxpayer maintains no permanent place of abode in such city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or (B)(i) within any period of five hundred forty-eight consecutive days the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are present in a foreign country or countries for at least four hundred fifty days, and (ii) during the period of five hundred forty-eight consecutive days the taxpayer is not present in the city for more than ninety days, and (iii) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section thirteen hundred twenty-seven of this article, and which period is contained within the period of five hundred forty-eight consecutive days, the taxpayer is present in the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that period of less than twelve months bears to five hundred forty-eight, or

(2) who is not domiciled in such city but maintains a permanent place of abode in such city and spends in the aggregate more than one hundred eighty-three days of the taxable year in such city, unless such individual is in active service in the armed forces of the United States.

(b) City nonresident individual. A city nonresident individual means an individual who is not a resident of such city.

(c) City resident estate or trust. A city resident estate or trust means:

(1) the estate of a decedent who at his death was domiciled in such city,

(2) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in such city, or

(3) a trust, or a portion of a trust, consisting of the property of:

(A) a person domiciled in such city at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(B) a person domiciled in such city at the time such trust or portion of a trust became irrevocable, if it was revocable when such property

was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or a portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(d) City nonresident estate or trust. A city nonresident estate or trust means an estate or trust which is not a resident of such city.

§ 1326. Returns and liabilities. (a) General. On or before the fifteenth day of the fourth month following the close of a taxable year, a city income tax surcharge return under a city income tax surcharge imposed pursuant to the authority of this article shall be made and filed by or for every city resident individual, estate or trust required to file a New York state personal income tax return for the taxable year.

(b) Husband and wife. (1) If the New York state personal income tax liabilities of husband and wife are determined on separate returns, their city income tax surcharge liabilities and returns shall be separate.

(2) If the New York state personal income tax liabilities of husband and wife (other than a husband and wife described in paragraph three of this subsection) are determined on a joint return, they shall file a joint city income tax surcharge return, and their city income tax surcharge liabilities shall be joint and several except as provided in paragraph five of this subsection, section six hundred fifty-four and subsection (e) of section six hundred eighty-five of this chapter.

(3) If either husband or wife is a city resident and the other is a city nonresident, and their New York state personal income tax liabilities are determined on a joint return:

(A) they may elect to file a joint city income tax surcharge return as if both were residents, in which case their city income tax surcharge liabilities shall be joint and several except as provided in paragraph five of this subsection, section six hundred fifty-four and subsection

(e) of section six hundred eighty-five of this chapter, or

(B) the resident spouse may elect to file a separate city income tax surcharge return, in which case his city income tax surcharge liability shall be determined as if he were filing a separate New York state personal income tax return.

(5) If a joint return has been made pursuant to this subsection for a taxable year and only one spouse is liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or an amount of a default in repayment of a guaranteed student, state university or city university loan of which the commissioner of taxation and finance has been notified pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this chapter, as the case may be, then an overpayment and interest thereon shall be credited against such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan, unless the spouse not liable for such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan demands, on a declaration made in accordance with regulations or instructions prescribed by the commissioner of taxation and finance, that the portion of the overpayment and interest attributable to such spouse not be credited against the past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan owed by the other spouse. Upon such demand the commissioner of taxation and finance shall determine the amount of the overpayment attributable to each spouse in accordance with regulations prescribed by the commissioner of taxation and finance and credit only that portion of the overpayment and interest thereon attributable to the spouse liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan against such past-due support, or a past-due legally enforceable debt, or a city

of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan.

(6) The commissioner shall clearly alert married taxpayers, on all appropriate publications and instructions, that their liability for tax will be joint and several if they file joint income tax returns. The commissioner shall include notice of an individual's right to relief from joint and several liability pursuant to section six hundred fifty-four of this chapter in the disclosure of rights statement required by section three thousand four of this chapter and in any notice regarding collection of tax due with respect to a liability on a joint return.

(c) Decedents. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(d) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

§ 1327. Change of resident status during year. (a) General. If an individual changes his status during his taxable year from city resident to city nonresident, or from city nonresident to city resident, he shall file one return as a city resident for the portion of the year during which he is a city resident, and a return under a local law authorized by article thirty-B of this chapter for the portion of the year during which he is a city nonresident, subject to such exceptions as the state

tax commission may prescribe by regulation.

(b) Trusts. If the status of a trust changes during its taxable year from city resident to city nonresident, or from city nonresident to city resident, the fiduciary shall file one return as a city resident trust for the portion of the year during which the trust is a city resident trust, and a return under a local law authorized by article thirty-B of this chapter for the portion of the year during which the trust is a city nonresident trust, subject to such exceptions as the state tax commission may prescribe by regulations.

(c) Computation of net state tax. When an individual or trust changes resident status during the taxable year, the net state tax shall be the net state tax determined as if such individual or trust were a state resident for the entire taxable year, multiplied by a fraction the numerator of which is such individual's or trust's New York adjusted gross income for the period of residence, computed as if the taxable year for federal tax purposes were limited to the period of residence, and the denominator of which is such individual's or trust's New York adjusted gross income for the entire taxable year. For purposes of the preceding sentence, New York adjusted gross income means New York adjusted gross income determined under article twenty-two of this chapter.

§ 1329. Requirement of withholding tax from wages. (a) A city income tax surcharge imposed pursuant to the authority of this article shall provide that such tax shall be withheld from the wages of city residents in the same manner and subject to the same requirements, to the greatest extent possible, as provided in sections six hundred seventy-one through six hundred seventy-eight of this chapter except that the term "aggregate amount" contained in paragraphs one, two and three of subsection (a) of section six hundred seventy-four of this chapter shall mean the aggregate of the aggregate amounts of New York state personal income tax, city personal income tax on residents authorized pursuant to article thirty of this chapter, city income tax surcharge on residents authorized pursuant to this article, city earnings tax on nonresidents authorized pursuant to article two-E of the general city law and city earnings tax on nonresidents authorized pursuant to article thirty-B of

this chapter required to be deducted and withheld.

(b) Withholding of tax on wages shall commence (i) in the case of a local law enacted in accordance with the requirements of paragraph (i) of subsection (c) of section thirteen hundred twenty-one of this article, not later than January first, nineteen hundred eighty-five, and (ii) in the case of a local law enacted in accordance with the requirements of paragraph (ii) of such subsection, not later than the effective date of such local law or ninety days after the date of enactment of such local law, whichever is later.

§ 1330. Credit for tax withheld. The city income tax surcharge withheld shall not reduce net state tax for purposes of computing the city income tax surcharge, but any amount of tax actually deducted and withheld under the authority of this article in any calendar year shall be deemed to have been paid to the state tax commission on behalf of the person from whom withheld, and such person shall be credited with having paid the amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the state tax commission.

§ 1331. Enforcement with other taxes. (a) Joint assessment. If there is assessed a tax under a city income tax surcharge imposed pursuant to the authority of this article and there is also assessed a tax against the same taxpayer pursuant to article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty or thirty-B of this chapter or article two-E of the general city law and payment of a single amount is required under the provisions of this article, such payment shall be deemed to have been made with respect to the taxes so assessed in proportion to the amounts of such taxes due, including tax, penalties, interest and additions to tax.

(b) Joint action. If the state tax commission takes action under such article twenty-two or under a local law enacted pursuant to the authority of article thirty or thirty-B of this chapter or article two-E of the general city law with respect to the enforcement and collection of the tax or taxes assessed under such articles the state tax

commission shall, wherever possible, accompany such action with a similar action under similar enforcement and collection provisions of such city income tax surcharge.

(c) Apportionment of moneys collected by joint action. Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty or thirty-B of this chapter or article two-E of the general city law and such city income tax surcharge.

(d) Joint deficiency action. Whenever the state tax commission takes any action with respect to a deficiency of income tax under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty or thirty-B of this chapter or article two-E of the general city law, other than the action set forth in subsection (a) of this section, it may in its discretion accompany such action with a similar action under such city income tax surcharge.

§ 1332. Administration, collection and review. (a) General. Except as otherwise provided in this article, any city income tax surcharge imposed pursuant to the authority of this article shall be administered and collected by the commissioner in the same manner as the tax imposed by article twenty-two of this chapter is administered and collected by the commissioner. All of the provisions of article twenty-two of this chapter relating to or applicable to payment of estimated tax, returns, payment of tax, claim of right adjustment, withholding of tax from wages, employer's statements and returns, employer's liability for taxes required to be withheld and all other provisions of article twenty-two of this chapter relating to or applicable to the administration, collection, liability for and review of the tax imposed by article twenty-two, including sections six hundred fifty-two through six hundred fifty-four, sections six hundred fifty-seven through six hundred fifty-nine, sections six hundred sixty-one and six hundred sixty-two, sections six hundred seventy-one and six hundred seventy-two, sections six hundred seventy-four through six hundred seventy-eight and sections six hundred eighty-one through six hundred ninety-seven of this chapter,

inclusive, shall apply to a city income tax surcharge imposed pursuant to the authority of this article with the same force and effect as if those provisions had been incorporated in full into this article, and had expressly referred to the city income tax surcharge imposed pursuant to the authority of this article, except where inconsistent with a provision of this article. Whenever there is joint collection of state personal income tax, city personal income tax, city income tax surcharge or city nonresident earnings taxes, it shall be deemed that such collection shall represent proportionately the applicable state personal income tax, city personal income tax, city income tax surcharge or city nonresident earnings taxes in determining the amount to be remitted to the city.

(b) Payment to designated depositories. The state tax commission, in its discretion, may require or permit any or all persons liable for any city income tax surcharge imposed pursuant to the authority of this article to make payments on account of estimated city income tax surcharge and payment of any city income tax surcharge, penalty or interest of such banks, banking houses or trust companies designated by the state tax commission and to file returns with such banks, banking houses or trust companies, as agent of the state tax commission, in lieu of paying a city income tax surcharge imposed pursuant to the authority of this article directly to the state tax commission. However, the state tax commission shall designate only such banks, banking houses or trust companies which are designated by the comptroller as depositories of the state.

(c) Combined filings. Notwithstanding any other provisions of this article, any law imposing a city income tax surcharge pursuant to the authority of this article shall provide that the state tax commission may require:

(1) the filing of any or all of the following:

(A) a combined return which, in addition to the return provided for in section thirteen hundred twenty-six, may also include any of the returns required to be filed by a resident individual of New York state pursuant to the provisions of section six hundred fifty-one of this chapter and which may be required to be filed by such individual pursuant to any local law enacted pursuant to the authority of article thirty or thirty-B of this chapter or article two-E of the general city law, and

(B) a combined employer's return which, in addition to the employer's return provided for by any law enacted pursuant to the authority of this article, may also include any of the employer's returns required to be filed by the same employer pursuant to the provisions of section six hundred seventy-four of this chapter and required to be filed by such employer pursuant to any local law enacted under the authority of article thirty or thirty-B of this chapter or article two-E of the general city law, and

(2) where a combined return or employer's return is required, and with respect to the payment of estimated tax, the state tax commission may also require the payment to it of a single amount which shall equal the total of the amounts (total taxes less any credits or refunds) which would have been required to be paid with the returns or employer's returns or in payment of estimated tax pursuant to the provisions of article twenty-two of this chapter, and the provisions of local laws enacted under the authority of this article or article thirty or thirty-B of this chapter or article two-E of the general city law.

(d) Liability for failure to pay estimated tax. For the tax year in which such local law is enacted, no addition to the tax shall be imposed, pursuant to subsection (c) of section six hundred eighty-five of this chapter, through the operation of the provisions of this section for the portion of the underpayment of estimated tax as the result of a local law enacted pursuant to paragraph (iii) of subsection (c) of section thirteen hundred twenty-one of this article.

§ 1333. Deposit and disposition of revenues. All revenue collected by the commissioner of taxation and finance from the tax imposed by any city pursuant to the authority of this article or article thirty-B of this chapter shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for such city. Such deposits shall be kept in trust and separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the commissioner of taxation and finance. The comptroller shall retain in his hands such amount as the commissioner of taxation

and finance may determine to be necessary for refunds in respect to the tax imposed by such city pursuant to the authority of this article or article thirty-B of this chapter and for reasonable costs of the commissioner of taxation and finance in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which the taxpayer shall be entitled under any law enacted by such city pursuant to the authority of this article or article thirty-B of this chapter. The comptroller, after reserving such refund fund and such cost shall, on or before the fifteenth day of each month, pay to the chief fiscal officer of such city the balance of such taxes collected, to be paid into the treasury of such city to the credit of the general fund except that he shall pay to the state department of social services that amount of overpayments of the tax imposed by such city pursuant to the authority of this article or article thirty-B of this chapter and the interest on such amount which is certified to him by the commissioner of taxation and finance as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this chapter and except that he shall pay to the New York state higher education services corporation that amount of overpayments of the tax imposed by such city pursuant to the authority of this article or article thirty-B of this chapter and the interest on such amount which is certified to him by the commissioner of taxation and finance as the amount to be credited against the amount of defaults in repayment of guaranteed student loans pursuant to subdivision five of section one hundred seventy-one-d of this chapter and except that he shall pay to the state university of New York or the city university of New York respectively that amount of overpayments of the tax imposed by such city pursuant to the authority of this article or article thirty-B of this chapter and the interest on such amount which is certified to him by the commissioner of taxation and finance as the amount to be credited against the amount of defaults in repayment of state or city university loans pursuant to subdivision six of section one hundred seventy-one-e of this chapter and except that, notwithstanding any other provision of law, he shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayments of the taxes imposed pursuant to the authority of this article or article thirty-B of this chapter and the interest on such

amount which is certified to him by the commissioner of taxation and finance as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this chapter, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this chapter and except that he shall pay to the city of New York that amount of overpayments of tax imposed pursuant to the authority of this article or article thirty-B of this chapter and the interest on such amount which is certified to him by the commissioner of taxation and finance as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this chapter, and except further that he/she shall pay to a non-obligated spouse that amount of overpayment of tax imposed by such city pursuant to the authority of this article or article thirty-B of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this chapter and which is certified to him by the commissioner of taxation and finance as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, and he shall deduct a like amount which he shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation or to the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment. The amount deducted for administering, collecting and distributing such taxes during such monthly period shall be paid by the comptroller into the general fund of the state treasury to the credit of the state purposes account therein. The first payment to such chief fiscal officer shall be made on or before March fifteenth, nineteen hundred eighty-five, which payment shall represent the balance of

revenue after provision for refund and such reasonable costs, with respect to taxes collected in nineteen hundred eighty-four. Subsequent payments shall be made on or before April fifteenth, nineteen hundred eighty-five, and on or before the fifteenth day of each succeeding month thereafter, and shall represent the balance of revenue with respect to taxes collected the preceding calendar months. The amounts so payable shall be certified to the comptroller by the commissioner of taxation and finance or his delegate, either of whom shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to such chief fiscal officer is more or less than the amount then due such city, the amount of overpayment or underpayment shall be certified to the comptroller by the commissioner of taxation and finance or his delegate, either of whom shall not be held liable for any inaccuracy in such certificate. The amount of overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments by the comptroller to such chief fiscal officer shall be adjusted by subtracting the amount of any such overpayment from, or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the commissioner of taxation and finance shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

ARTICLE 30-B

CITY EARNINGS TAX ON NONRESIDENTS

Section 1340. Authorization to impose tax.

1341. Withholding requirement.

1342. Administrative provisions.

1343. Deposit and distribution of revenues.

§ 1340. Authorization to impose tax. (a) In addition to any other taxes, now authorized by law, any city having a population of more than one hundred ninety thousand but less than two hundred fifteen thousand inhabitants, determined in accordance with the 1980 federal census, is hereby authorized and empowered to adopt and amend local laws imposing a

tax on the earnings of nonresidents of such city to be administered in the manner provided for in this article by the commissioner.

The tax authorized by this article may be imposed only if the city imposing the tax herein authorized also imposes a city income tax surcharge on its residents. The rates of such tax shall be the rates contained in section two of the model local law.

(b) (i) A local law enacted pursuant to the authority of this section shall go into effect on the first day of January, nineteen hundred eighty-four and shall apply to taxable years beginning on or after such date and before two thousand twenty-eight. Provided, however, no such local law shall be so effective unless such local law is enacted by July thirty-first, nineteen hundred eighty-four and unless a certified copy of such local law is mailed by registered or certified mail to the commissioner at such commissioner's office in Albany by such date. (ii) If the requirements of the preceding sentence are not met, a local law enacted pursuant to the authority of this section shall go into effect on the first day of the next succeeding January and shall apply to taxable years beginning on or after such date and before two thousand twenty-eight. Provided, however, no such local law shall be so effective unless such local law is enacted at least ninety days prior to the date it is to become effective and unless a certified copy of such local law is mailed by registered or certified mail to the commissioner at such commissioner's office in Albany by such date. However, the commissioner may waive and reduce such ninety day minimum requirements within a period of not less than thirty days prior to such effective date if such commissioner deems such action to be consistent with such commissioner's duties under this article. (iii) Any amendment of such a local law enacted pursuant to the authority of the section, which changes the rate of the income tax surcharge on residents, shall take effect on the first day of January in the year in which such amendment is enacted and shall apply to taxable years beginning on or after such date, if such amendment is enacted on or before July thirty-first of the year in which it is to take effect and a certified copy of such amendment is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany by such date. (iv) If the requirements of paragraph (iii) of this subsection are not met, the amendment of such local law

shall go into effect on the first day of the next succeeding January and shall apply to taxable years beginning on or after such date, provided that no such amendment shall take effect unless it is enacted at least ninety days prior to the date it is to become effective and a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany by such date.

(c) The terms of such local law shall be substantially the same as the following model local law.

EARNINGS TAX ON NONRESIDENTS

Model Local Law

- Section
1. Meaning of terms.
 2. Persons subject to tax.
 3. Taxable years to which tax imposed by this local law applies.
 4. Allocation to the city.
 5. Accounting periods and methods.
 7. Withholding of tax on wages.
 8. Returns and payment of tax.
 9. Combined returns and employer's returns.
 10. Time and place for filing returns and paying tax.
 11. Signing of returns and other documents.
 12. Change of residence status during year.
 13. Extensions of time.
 14. Requirements concerning returns, notices, records and statements.
 15. Report of change in federal or New York state taxable income.
 16. Effect of invalidity in part; inconsistencies with other laws.

Section 1. Meaning of terms. As used in this local law, the following terms shall mean and include:

(a) City. City shall mean the city imposing the tax.

(b) Payroll period and employer. Payroll period and employer shall mean the same as payroll period and employer as defined in subsections (b) and (d) of section thirty-four hundred one of the internal revenue code, and "employee" shall also include all those included as employees

in subsection (c) of such section of such code.

* (c) Wages. Wages shall mean wages as defined in subsection (a) of section thirty-four hundred one of the internal revenue code, except that (1) wages shall not include payments for active service as a member of the armed forces of the United States and shall not include, in the case of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is such individual's distributive or pro rata share for federal income tax purposes or which such individual is required to take into account separately for federal income tax purposes and (2) wages shall include (i) the amount of member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of New York or subdivision nineteen of section twenty-five hundred seventy-five of the education law, (ii) the amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law, (iii) the amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the administrative code of the city of New York, and (iv) the amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

* NB Effective until ch 525/2011 § 5 takes effect

* (c) Wages. Wages shall mean wages as defined in subsection (a) of section thirty-four hundred one of the internal revenue code, except that (1) wages shall not include payments for active service as a member of the armed forces of the United States and shall not include, in the case of a nonresident individual or partner of a partnership doing an

insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is such individual's distributive or pro rata share for federal income tax purposes or which such individual is required to take into account separately for federal income tax purposes and (2) wages shall include (i) the amount of member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen, subdivision d of section six hundred thirteen or section twelve hundred four-a of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of New York or subdivision nineteen of section twenty-five hundred seventy-five of the education law, (ii) the amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law, (iii) the amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the administrative code of the city of New York, and (iv) the amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

* NB See ch 525/2011 § 7 for effectiveness

* (c) Wages. Wages shall mean wages as defined in subsection (a) of section thirty-four hundred one of the internal revenue code, except that (1) wages shall not include payments for active service as a member of the armed forces of the United States and shall not include, in the case of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is such individual's distributive or pro rata share for federal income tax purposes or which such individual is required to take into account separately for federal income tax purposes and (2) wages shall include

(i) the amount of member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1 or 13-125.1 of the administrative code of the city of New York, and (ii) the amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law.

* NB Effective upon expiration of ch 525/2011 § 5

(d) Net earnings from self-employment. Net earnings from self-employment shall mean the same as net earnings from self-employment as defined in subsection (a) of section fourteen hundred two of the internal revenue code, except that the deduction for wages and salaries paid or incurred for the taxable year which is not allowed pursuant to section two hundred eighty-C of such code shall be allowed, and except that an estate or trust shall be deemed to have net earnings from self-employment determined in the same manner as if it were an individual subject to the tax on self-employment income imposed by section fourteen hundred one of the internal revenue code diminished by (1) the amount of any deduction allowed by subsection (c) of section six hundred forty-two of the internal revenue code and (2) the deductions allowed by sections six hundred fifty-one and six hundred sixty-one of such code to the extent that they represent distributions or payments to a resident of the city. However, "trade or business" as used in subsection (a) of section fourteen hundred two of such code shall mean the same as trade or business as defined in subsection (c) of section fourteen hundred two of such code, except that paragraphs four, five and six of such subsection shall not apply in determining net earnings from self-employment taxable under this local law. Provided however, in the case of a nonresident individual or partner of a partnership doing an insurance business described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes shall not be considered to be "net earnings from self-employment".

(e) Taxable year. Taxable year shall mean the taxpayer's taxable year for federal income tax purposes.

(f) Resident individual. A resident individual shall mean an individual:

(1) who is domiciled in the city, unless (A) the taxpayer maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or (B) (i) within any period of five hundred forty-eight consecutive days the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are not present in the city for more than ninety days, and (iii) during any period of less than twelve months, which would be treated as a separate taxable period based on a change of resident status, and which period is contained within the period of five hundred forty-eight consecutive days, the taxpayer is present in the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that period of less than twelve months bears to five hundred forty-eight, or

(2) who is not domiciled in the city but maintains a permanent place of abode in the city and spends in the aggregate more than one hundred eighty-three days of the taxable year in the city, unless such individual is in active service in the armed forces of the United States.

(g) Nonresident individual. A nonresident individual shall mean an individual who is not a resident.

(h) Resident estate or trust. A resident estate or trust shall mean:

(1) the estate of a decedent who at his death was domiciled in the city,

(2) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in the city, or

(3) a trust, or a portion of a trust, consisting of the property of:

(A) a person domiciled in such city at the time such property was transferred to the trust, if such trust or portion of a trust was then

irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(B) a person domiciled in such city at the time such trust or portion of a trust became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or a portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(i) Nonresident estate or trust. A nonresident estate or trust shall mean an estate or trust which is not a resident.

(j) The term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

(k) Comparable meaning of terms. Unless a different meaning is clearly required, any term used in this local law shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal taxes but such meaning shall be subject to the exceptions or modifications prescribed in or pursuant to article thirty-B of the tax law or by the laws of this state. Any reference in this local law to the internal revenue code, the internal revenue code of nineteen hundred eighty-six or to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred eighty-six (unless a reference to the internal revenue code of nineteen hundred fifty-four is clearly intended), and amendments thereto, and other provisions of the laws of the United States relating to federal taxes, and amendments thereto.

§ 2. Persons subject to tax. (a) Imposition of tax. A tax is hereby imposed at a rate not to exceed one-half of one percent on the wages earned, and net earnings from self-employment, within the city, of every nonresident individual, estate and trust.

(b) Exclusion. (1) In computing the amount of wages and net earnings from self-employment taxable under subsection (a) of this section, there shall be allowed an exclusion against the total of wages and net earnings from self-employment in accordance with the following table:

Total of Wages and Net Earnings	
From Self-Employment	Exclusion Allowable
Not Over \$10,000	\$3,000
Over \$10,000 But Not Over \$20,000	\$2,000
Over \$20,000 But Not Over \$30,000	\$1,000
Over \$30,000	NONE

(2) The exclusion allowable shall be applied pro rata against wages and net earnings from self-employment.

(3) For taxable periods of less than one year, the exclusion allowable shall be prorated pursuant to regulations of the state tax commission.

(c) Limitation. In no event shall a taxpayer be subject to the tax under this local law in an amount greater than he would be required to pay if he were a resident of the city and subject to a city income tax surcharge on residents of the city adopted by the city pursuant to authority granted by article thirty-A of the tax law.

§ 3. Taxable years to which tax imposed by this local law applies. The tax imposed by this local law is imposed for taxable years beginning after December thirty-first, nineteen hundred eighty-three and before January first, two thousand twenty-eight.

§ 4. Allocation to the city. (a) General. If net earnings from self-employment are derived from services performed, or from sources, within and without the city, there shall be allocated to the city a fair and equitable portion of such earnings.

(b) Allocation of net earnings from self-employment. (1) Place of business. If a taxpayer has no regular place of business outside the city all of his net earnings from self-employment shall be allocated to the city.

(2) Allocation by taxpayer's books. The portion of net earnings from self-employment allocable to the city may be determined from the books and records of a taxpayer's trade or business, if the methods used in keeping such books and the accuracy thereof are approved by the state tax commission as fairly and equitably reflecting net earnings from self-employment within the city.

(3) Allocation by formula. If paragraph two of this subsection does not apply to the taxpayer, the portion of net earnings from self-employment allocable to the city shall be determined by multiplying (A) net earnings from self-employment within and without the city, by (B) the average of the following three percentages:

(i) Property percentage. The percentage computed by dividing (I) the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with the net earnings from self-employment and located within the city, by (II) the average of the value, at the beginning and end of the taxable year, of all real and tangible personal property connected with the net earnings from self-employment and located both within and without the city. For this purpose, real property shall include real property, whether owned or rented.

(ii) Payroll percentage. The percentage computed by dividing (I) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the net earnings from self-employment derived from a trade or business carried on within the city, by (II) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the net earnings from self-employment derived from a trade or business carried on both within and without the city.

(iii) Gross income percentage. The percentage computed by dividing (I) the gross sales or charges for services performed by or through an agency located within the city, by (II) the total of all gross sales or charges for services performed within and without the city. The sales or charges to be allocated to the city shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices or other

agencies of the trade or business from which a taxpayer is deriving net earnings from self-employment, situated within the city.

(c) Other allocation methods. The portion of net earnings from self-employment allocable to the city shall be determined in accordance with rules and regulations of the state tax commission if it shall appear to the tax commission that the net earnings from self-employment are not fairly and equitably reflected under the provisions of subsection (b) of this section.

(d) Special rules for real estate. Income and deductions from the rental of real property and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subsection (b) or (c) of this section, but shall be considered as entirely derived from or connected with the place in which such property is located.

§ 5. Accounting periods and methods. (a) Accounting periods. A taxpayer's taxable year under this local law shall be the same as his taxable year for federal income tax purposes.

(b) Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this local law shall be similarly changed. If a taxable period of less than twelve months results from a change of taxable year, the exclusion allowable under section two of this local law shall be prorated under regulations of the state tax commission.

(c) Accounting methods. A taxpayer's method of accounting under this local law shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, net earnings from self-employment within the city shall be computed under such method as in the opinion of the state tax commission clearly reflects net earnings from self-employment within the city.

(d) Change of accounting methods. (1) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this local law shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably

allocated and included for the taxable year of the change and the preceding taxable years beginning after nineteen hundred eighty-three, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the state tax commission.

§ 7. Withholding of tax on wages. The provisions contained in part V of article twenty-two of the tax law (relating to withholding of tax on wages) shall be applicable with the same force and effect as if those provisions had been incorporated in full in this section and had expressly referred to the tax imposed by this local law except where inconsistent with the provisions of this local law, except that the term "aggregate amount" contained in paragraphs one, two and three of subsection (a) of section six hundred seventy-four of the tax law shall mean the aggregate of the aggregate amounts of New York state personal income tax, city earnings tax on nonresidents authorized pursuant to article two-E of the general city law, city earnings tax on nonresidents authorized pursuant to article thirty-B of the tax law, city personal income tax on residents authorized pursuant to article thirty of the tax law and city income tax surcharge on residents authorized pursuant to article thirty-A of the tax law required to be deducted and withheld.

§ 8. Returns and payment of tax. (a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, every person subject to the tax shall make and file a return and any balance of the tax shown due on the face of such return shall be paid therewith. The state tax commission may, by regulation, provide for the filing of returns and payment of the tax at such other times as it deems necessary for the proper enforcement of this local law. The state tax commission may also provide by regulation that any return otherwise required to be made and filed under this local law by any nonresident individual need not be made and filed if such nonresident individual had, during the taxable year to which the return would

relate, no net earnings from self-employment within the city. Any regulation allowing such waiver of return may provide for additional limitations on and conditions and prerequisites to the privilege of not filing a return.

(b) Decedents. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(c) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(d) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(e) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(f) Cross reference. For provisions as to information returns by partnerships, employers and other persons, see section fourteen.

§ 9. Combined returns and employer's returns. The state tax commission may require:

(1) The filing of any or all of the following:

(A) A combined return which in addition to the return provided for in a local law authorized by article thirty-B of the tax law may also include returns required to be filed under a local law authorized by article two-E of the general city law or article thirty or thirty-A of the tax law and under article twenty-two of the tax law.

(B) A combined employer's return which in addition to the employer's return provided for in a local law authorized by article thirty-B of the tax law may also include employer's returns required to be filed under a local law authorized by article two-E of the general city law or article thirty or thirty-A of the tax law and under article twenty-two of the tax law.

(2) Where a combined return or employer's return is required, and with

respect to the payment of estimated tax, the state tax commission may also require payment of a single amount which shall be the total of the amounts (total taxes less any credits or refunds) required to be paid with the returns or employer's returns or in payment of estimated tax pursuant to the provisions of local laws imposed under the authority of article thirty-B of the tax law, article two-E of the general city law or article thirty or thirty-A of the tax law and pursuant to the provisions of article twenty-two of the tax law.

§ 10. Time and place for filing returns and paying tax. A person required to make and file a return under this local law shall, without assessment, notice or demand, pay any tax due thereon to the state tax commission on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The state tax commission shall prescribe by regulation the place for filing any return, statement or other document required pursuant to this local law and for payment of any tax.

§ 11. Signing of returns and other documents. (a) General. Any return, statement or other document required to be made pursuant to this local law shall be signed in accordance with regulations or instructions prescribed by the state tax commission. The fact that an individual's name is signed to a return, statement or other document, shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this local law, including a copy of a federal return, shall constitute a certification by the person making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 12. Change of residence status during year. (a) General. If an individual changes his status during his taxable year from resident to nonresident, or from nonresident to resident, he shall file a return as

a nonresident for the portion of the year during which he is a nonresident if he is subject to the tax imposed by this local law or, if not subject to such tax, an information return for the portion of the year during which he is a nonresident, subject to such exceptions as the state tax commission may prescribe by regulation. Such information return shall be due at the same time as the return required by a local law authorized by article thirty-A of the tax law for the portion of the year during which such individual is a resident.

(b) City taxable wages and net earnings from self-employment for portion of year individual is a nonresident. The city taxable wages and net earnings from self-employment for the portion of the year during which the taxpayer is a nonresident shall be determined, except as provided in subsection (c), under this local law as if his taxable year for federal income tax purposes were limited to the period of his nonresident status.

(c) Special accruals. (1) If a individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for city earnings tax purposes for such portion of the taxable year or a prior taxable year. The amounts of such accrued items shall be determined as if such accrued items were includible or allowable for federal self-employment tax purposes.

(2) If an individual changes his status from nonresident to resident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for federal self-employment tax purposes for such portion of the taxable year or a prior taxable year. The amounts of such accrued items shall be determined as if such accrued items were includible or allowable for federal self-employment tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subsection shall be taken into account in determining city adjusted

wages earned, or net earnings from self-employment, within the city, for any subsequent taxable period.

(4) Where an individual changes his status from resident to nonresident, the accruals under this subsection shall not be required if the individual files with the state tax commission a bond or other security acceptable to the commission, conditioned upon the inclusion of amounts accruable under this subsection in the determination of the city income tax surcharge under a local law authorized by article thirty-A of the tax law for one or more subsequent taxable years as if the individual had not changed his resident status. In such event, the tax under this local law shall not apply to such amounts.

(d) Prorations. Where an individual changes his status during his taxable year from resident to nonresident or from nonresident to resident, the exclusion allowable under subsection (b) of section two shall be prorated, under regulations of the state tax commission, to reflect the portions of the entire taxable year during which the individual was a resident and a nonresident.

§ 13. Extensions of time. The state tax commission may grant a reasonable extension of time for payment of a tax or estimated tax (or any installment), or for filing any return, statement or other document required pursuant to this local law, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States or who intends to claim nonresident status pursuant to subparagraph (B) of paragraph one of subsection (f) of section one, no such extension for filing any return, statement or other document shall exceed six months.

§ 14. Requirements concerning returns, notices, records and statements. (a) General. The state tax commission may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The state tax commission may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the state tax commission may deem sufficient to show whether or not such person is liable under this local law for tax or for collection of tax.

(b) Partnerships. Every partnership doing business in the city and having no partners who are residents shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and

such other pertinent information as the state tax commission may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this subsection, "taxable year" means a year or a period which would be a taxable year of the partnership if it were subject to tax under this local law.

(c) Information at source. The state tax commission may prescribe regulations and instructions requiring returns of information to be made and filed on or before February twenty-eighth of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this local law. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the state tax commission, as may be required by regulation.

§ 15. Report of change in federal or New York state taxable income. If the amount of a taxpayer's federal or New York state taxable income or self-employment income reported on his federal or New York state tax return for any taxable year is changed or corrected by the United States internal revenue service or the New York state commissioner of taxation and finance or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or New York state or if a taxpayer, pursuant to subsection (d) of section six thousand two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section or if a taxpayer, pursuant to subsection (f) of section six

hundred eighty-one of the tax law executes a notice of waiver of the restrictions provided in subsection (c) of said section, or if any tax on self-employment income in addition to that shown on his return is assessed, the taxpayer shall report such change or correction in federal or New York state taxable income or such execution of such notice of waiver or such assessment and the changes or corrections of his federal or New York state taxable income or self-employment income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver or the making of such assessment as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal or New York state income or self-employment income tax return shall also file within ninety days thereafter an amended return under this local law, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having any income derived from city sources, and (ii) the term "federal income tax return" shall include the returns of income required under section six thousand thirty-one of the internal revenue code. Reports made under this section by a partnership shall indicate the portion of the change in each item of income, gain, loss or deduction allocable to each partner and shall set forth such identifying information with respect to such partner as may be prescribed by the commissioner.

§ 16. Effect of invalidity in part; inconsistencies with other laws.

(a) If any clause, sentence, paragraph, subsection, section, provision or other portion of this local law or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this local law or the application of such portion held invalid, to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subsection, section, provision or other portion thereof directly involved in such holding or to the person and circumstances therein involved.

(b) If any provision of this local law is inconsistent with, in

conflict with, or contrary to any other provision of law, such provision of this local law shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

(d) Any wages received by an individual as an employee of a business located in a tax-free NY area within the city during the first five years of such business's ten year taxable period specified in subdivision (a) of section thirty-nine of this chapter and earned at such location shall be exempt from the tax authorized to be imposed by this article to the extent included in federal adjusted gross income and allowed under section thirty-nine of this chapter. During the second five years of such business's ten year taxable period, the first two hundred thousand dollars of such wages in the case of a taxpayer filing as a single individual, the first two hundred fifty thousand dollars of such wages in the case of a taxpayer filing as a head of household, and three hundred thousand dollars of such wages in the case of a taxpayer filing a joint return, to the extent included in federal adjusted gross income and allowed under section thirty-nine of this chapter.

§ 1341. Withholding requirement. Withholding of tax on wages shall commence (i) in the case of a local law enacted in accordance with the requirements of paragraph (i) of subsection (b) of section thirteen hundred forty of this article, not later than January first, nineteen hundred eighty-five, and (ii) in the case of a local law enacted in accordance with the requirements of paragraph (ii) of such subsection, not later than the effective date of such local law or ninety days after the date of enactment of such local law, whichever is later.

§ 1342. Administrative provisions. (a) The provisions contained in sections six hundred fifty-three, six hundred fifty-eight, six hundred sixty-two and thirteen hundred thirty-one of this chapter, including the provisions of judicial review by a proceeding under article seventy-eight of the civil practice law and rules, shall be applicable with the same force and effect as if those provisions had been incorporated in full in this section and had expressly referred to any

tax imposed pursuant to the authority of this article except where inconsistent with the provisions of this article.

(b) For the tax year in which such local law is enacted, no addition to the tax shall be imposed, pursuant to subsection (c) of section six hundred eighty-five of this chapter, through the operation of the provisions of this section for the portion of the underpayment of estimated tax as the result of a local law enacted pursuant to paragraph (iii) of subsection (b) of section thirteen hundred forty of this article.

§ 1343. Deposit and disposition of revenues. Revenues resulting from the imposition of the tax authorized by this article shall be deposited and disposed of in the same manner as revenues resulting from the imposition of the tax authorized by article thirty-A of this chapter.

* ARTICLE 30-C

CITY SURCHARGE ON PROPERTY THAT DOES NOT SERVE AS A PRIMARY RESIDENCE

Section 1350. Imposition of surcharge.

1351. Definitions.

1352. Primary residence.

1353. Surcharge rates.

1354. Administration of surcharge.

1355. Administrative and judicial review.

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* NB Repealed June 30, 2031

*** § 1350. Imposition of surcharge.** In addition to any other tax or assessment imposed by this chapter or other law, there is hereby imposed, beginning on July first, two thousand twenty-six, a surcharge in accordance with this article on a covered property, or in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, that is not a primary residence, provided that (a) for fiscal years beginning on or after July first, two thousand twenty-six, and before July first, two thousand twenty-eight,

the phase one market value of such covered property that is a class one property is equal to or greater than five million dollars, the phase one market value of such covered property that is a residential condominium dwelling unit is equal to or greater than one million dollars, or, in the case of a covered property that is a residential cooperative property, the phase one market value of a residential cooperative dwelling unit within such residential cooperative property is equal to or greater than one million dollars; and (b) for fiscal years beginning on or after July first, two thousand twenty-eight, the phase two market value of such covered property or, in the case of a covered property that is a residential cooperative property, such residential cooperative dwelling unit, is equal to or greater than five million dollars.

* NB Repealed June 30, 2031

* **§ 1351. Definitions.** As used in this article, the following terms shall have the following meanings:

(a) "Administrative code" means the administrative code of the city of New York.

(b) "Class one property" means class one, as such class of property is defined in section eighteen hundred two of the real property tax law, other than such property described in subparagraph (c) of such definition.

(c) "Class two property" means class two, as such class of property is defined in section eighteen hundred two of the real property tax law.

(d) "Covered owner" means:

(1) an owner or owners of real property classified as class one property;

(2) a tenant-stockholder of a cooperative corporation whose interest in a portion of real property held by such corporation is represented by shares of stock in such corporation;

(3) an owner or owners of a residential condominium dwelling unit;

(4) where real property classified as class one or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation are held, in trust, a beneficial owner or owners of such trust, provided that such beneficial owner or owners are the sole beneficiaries of such trust; or

(5) where real property classified as class one or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation are held, by a partnership, corporation or limited liability company, a partner or partners, shareholder or shareholders or member or members of such partnership, corporation, or limited liability company, respectively, provided that such partner or partners, shareholder or shareholders, or member or members hold a majority interest in such partnership, corporation or limited liability company respectively.

(e) "Covered property" means real property, other than excluded property, classified as:

(1) class one property, other than vacant land;

(2) class two property that is a residential cooperative property in which at least one residential cooperative dwelling unit: (A) has a phase one market value equal to or greater than one million dollars or phase two market value equal to or greater than five million dollars; and (B) is not a primary residence; and

(3) class two property that is a residential condominium dwelling unit.

(f) "Department of finance" means the department of finance in a city having a population of one million or more.

(g) "Excluded property" means a class one or class two property:

(1) for which a temporary or permanent certificate of occupancy is required and has not yet been issued; or

(2) a residential condominium dwelling unit or residential cooperative dwelling unit that is subject to an offering plan required by section three hundred fifty-two-e of the general business law and such unit has not been sold, or an economic interest in such unit has not been transferred, by the person, partnership, corporation, company, trust or association who has filed such plan.

(h) "Imputed cooperative phase one market value" means the market value of a residential cooperative dwelling unit in a residential cooperative property, calculated as the product of:

(1) the market value of such residential cooperative property as determined by the department of finance pursuant to chapter fifty-eight of the New York city charter for the fiscal year in which the surcharge described in this article is imposed; and

(2) the quotient of (A) the shares in a cooperative corporation

representing an interest in such residential cooperative dwelling unit; divided by (B) the total shares of stock in such cooperative corporation.

(i) "Notice of surcharge" means a notice issued by the department of finance to an owner indicating that a covered property, or, in the case of a residential cooperative property, a residential cooperative dwelling unit, is, or may be, subject to the surcharge authorized by this article, including the phase one market value or phase two market value, as applicable, of such covered property or residential cooperative dwelling unit and a determination by the department of finance that such covered property or residential cooperative dwelling unit is not a primary residence.

(j) "Owner" means:

(1) an owner or owners of real property classified as class one property;

(2) a tenant-stockholder of a cooperative corporation whose interest in a portion of real property held by such corporation is represented by shares of stock in such corporation, or such corporation; or

(3) an owner or owners of a residential condominium dwelling unit.

(k) "Phase one market value" means:

(1) for a class one property, the market value of a covered property as determined by the department of finance pursuant to chapter fifty-eight of the New York city charter for the fiscal year in which the surcharge described in this article is imposed;

(2) for a class two property that is a residential condominium dwelling unit, the market value of such residential condominium dwelling unit as determined by the department of finance pursuant to chapter fifty-eight of the New York city charter for the fiscal year in which the surcharge described in this article is imposed; and

(3) for a class two property that is a residential cooperative property, the imputed cooperative phase one market value for any residential cooperative dwelling unit in such residential cooperative property.

(l) "Phase two market value" means:

(1) for a class one property, the market value of a covered property as determined by the department of finance pursuant to chapter fifty-eight of the New York city charter for the fiscal year in which

the surcharge described in this article is imposed;

(2) for a class two property that is a residential condominium dwelling unit, the market value of such residential condominium dwelling unit, as determined by the department of finance pursuant to chapter fifty-eight of the New York city charter for the fiscal year in which the surcharge described in this article is imposed, provided that such market value shall be determined using a method that considers sales of comparable residential condominium dwelling units or comparable residential cooperative dwelling units without regard to the restrictions described in section five hundred eighty-one of the real property tax law or section three hundred thirty-nine-y of the real property law; and

(3) for a class two property that is a residential cooperative property, the market value of any residential cooperative dwelling unit in such residential cooperative property, as determined by the department of finance pursuant to chapter fifty-eight of the New York city charter for the fiscal year in which the surcharge described in this article is imposed, provided that such market value shall be determined using a method that considers sales of comparable residential cooperative dwelling units or comparable residential condominium dwelling units without regard to the restrictions found in section five hundred eighty-one of the real property tax law.

(m) "Primary residence" means the use of a covered property, or, in the case of a residential cooperative property, a residential cooperative dwelling unit, as of the taxable status date immediately preceding the fiscal year in which the surcharge described by this article is imposed, as a primary residence of (1) one or more of the covered owners, or an immediate family member of one or more of the covered owners, provided such covered owners are natural persons; or (2) one or more lessees, and any sub-lessees to which a lessee has sublet the covered property or residential cooperative dwelling unit pursuant to subdivision two of section two hundred twenty-six-b of the real property law, provided any such lessee or sub-lessee is a natural person occupying such covered property or residential cooperative dwelling unit pursuant to a bona fide lease agreement negotiated in an arms-length transaction with a term of not less than one year. For purposes of this article, the phrase "immediate family member" means a spouse, child,

sibling, parent, grandparent, or grandchild.

(n) "Residential condominium dwelling unit" means a unit, as defined in section three hundred thirty-nine-e of the real property law, held in a condominium form of ownership and used as residential real property, other than: (1) such a unit that is residential cooperative property; or (2) such a unit that includes more than three dwelling units and all such dwelling units are held by the same owner, except where the department of finance determines that a unit has been divided into more than three units to avoid application of the surcharge.

(o) "Residential cooperative dwelling unit" means a dwelling unit in real property held by a cooperative corporation where an owner is a tenant-stockholder of such cooperative corporation and such dwelling unit is used as residential real property.

(p) "Residential cooperative property" means real property owned or leased by a cooperative corporation and that contains one or more residential cooperative dwelling units.

(q) "Taxable status date" means the January fifth immediately preceding the fiscal year in which the surcharge is imposed pursuant to this article.

* NB Repealed June 30, 2031

* **§ 1352. Primary residence.** (a) Determination of primary residency. (1) The department of finance shall make, on an annual basis, an initial determination that a covered property, or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, that has a phase one or phase two market value equal to, or greater than, the threshold provided in section thirteen hundred fifty of this article, is not a primary residence. The department of finance shall make a determination of primary residence based on factors identified by rules of the department of finance, including but not limited to whether such covered property or residential cooperative dwelling unit was occupied in aggregate for a majority of days during a calendar year by a covered owner of such covered property or residential cooperative dwelling unit. The department of finance shall make such initial determination based on information available to such department.

(2) The department of finance shall provide notice to the owner of a covered property, or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, of such initial determination, provided that, for the fiscal year beginning July first, two thousand twenty-six, such department shall provide such notice no later than August thirtieth, two thousand twenty-six. Such notice shall include an opportunity for such owner to submit proof of primary residence, to the satisfaction of such department, in accordance with a time period established by rules of such department. The department of finance may require that such owner provide a certification that such covered property or residential cooperative dwelling unit is a primary residence, as well as any documentation demonstrating:

(A) that a covered owner provided the address of such covered property or residential cooperative dwelling unit as such covered owner's permanent home address on the New York state resident income tax return filed by such covered owner for the calendar year that ends immediately preceding the fiscal year in which the surcharge is imposed;

(B) such covered property or residential cooperative dwelling unit received a real property tax exemption pursuant to section four hundred twenty-five of the real property tax law during the fiscal year immediately preceding the fiscal year in which the surcharge is imposed or the owner of such covered property or residential cooperative dwelling unit received a tax credit pursuant to subsection (eee) of section six hundred six of the tax law for such covered property or residential cooperative dwelling unit for the calendar year immediately preceding the fiscal year in which the surcharge is imposed; or

(C) such covered property or residential cooperative dwelling unit is the primary residence of one or more lessees or sub-lessees to which a lessee has sublet such covered property or residential cooperative dwelling unit pursuant to subdivision two of section two hundred twenty-six-b of the real property law or an immediate family member of a covered owner.

(3) After consideration of a submission of proof of primary residence by a covered owner pursuant to paragraph two of this subsection, and other available information, the department of finance shall determine whether such covered property or residential cooperative dwelling unit

is not a primary residence. Such determination shall constitute a final determination of the department of finance.

(4) The department of finance may require electronic submission of any certification or documentation described in this section.

(5) Failure to provide the notice required by this section shall not affect the validity of the imposition of the surcharge authorized by this article.

(b) Promulgation of rules. The department of finance may promulgate rules to:

(1) specify additional factors or documentation that may assist in the initial or final determination of whether a covered property, or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, is a primary residence; and

(2) establish a process through which the department of finance may audit any certification or documentation of primary residency submitted pursuant to this section within six years of such submission.

* NB Repealed June 30, 2031

* **§ 1353. Surcharge rates.** The surcharge shall be calculated as follows:

(a) For fiscal years beginning on or after July first, two thousand twenty-six, and before July first, two thousand twenty-eight, (1) for covered property that is in class one, where the phase one market value is (A) greater than or equal to five million dollars, but less than or equal to fifteen million dollars, at a rate of 0.8 percent; (B) greater than fifteen million dollars, but less than or equal to twenty-five million dollars, at a rate of 1.05 percent; (C) greater than twenty-five million dollars, at a rate of 1.3 percent; and (2) for covered property that is a residential condominium dwelling unit or, in the case of a residential cooperative property, a residential cooperative dwelling unit, where the phase one market value is (A) greater than or equal to one million dollars, but less than or equal to three million dollars, at a rate of 4.0 percent; (B) greater than three million dollars, but less than or equal to five million dollars, at a rate of 5.25 percent; (C) greater than five million dollars, at a rate of 6.5 percent.

(b) For fiscal years beginning on or after July first, two thousand

twenty-eight, for covered property or, in the case of a residential cooperative property, a residential cooperative dwelling unit, where the phase two market value is (1) greater than or equal to five million dollars, but less than or equal to fifteen million dollars, at a rate of 0.8 percent; (2) greater than fifteen million dollars, but less than or equal to twenty-five million dollars, at a rate of 1.05 percent; (3) greater than twenty-five million dollars, at a rate of 1.3 percent.

* NB Repealed June 30, 2031

* **§ 1354. Administration of surcharge.** (a) The department of finance shall add the surcharge authorized by this article to the statement of account of a covered property. In the case of a residential cooperative property, the department of finance shall add to the statement of account of such residential cooperative property the sum of any surcharges authorized by this article for each residential cooperative dwelling unit in such residential cooperative property where such dwelling unit: (1) has a phase one or phase two market value equal to, or greater than, the threshold provided in section thirteen hundred fifty of this article; and (2) does not serve as a primary residence. Such surcharge shall be due and payable in the same manner as real property taxes are due and payable pursuant to section fifteen hundred nineteen-a of the New York city charter. The department of finance shall administer and enforce this surcharge, to the greatest extent practicable not inconsistent with this section, in the same manner used to administer and enforce real property taxes, except that any abatement, credit or exemption authorized by law shall not apply to such surcharge.

(b) Notwithstanding subsection (a) of this section, any surcharge imposed on a covered property in the fiscal year commencing on July first, two thousand twenty-six, shall be due and payable on the same date as the second semi-annual installment of real property taxes is due, as described in section fifteen hundred nineteen-a of the charter of the city of New York.

(c) Notwithstanding any provision of law to the contrary, where the department of finance adds the sum of any surcharges authorized by this article for a residential cooperative dwelling unit pursuant to

subdivision (a) of this section to the statement of account of a residential cooperative property, each such surcharge shall be collected by the cooperative corporation from the tenant-stockholder of such cooperative corporation whose interest in each such residential cooperative dwelling unit is represented by shares of stock in such corporation.

(d) Notwithstanding any provision of law to the contrary, the surcharge imposed on a covered property pursuant to this article shall be separate and distinct from any other tax levied on real property. Any revenue collected as a result of the imposition of this surcharge shall not be included in the calculation of the tax levy for purposes of determining class shares pursuant to article eighteen of the real property tax law, shall not be subject to apportionment among classes of real property, and shall not be considered when establishing tax rates for any class of property. Such revenue shall be considered receipts other than taxes on real property for the purposes of section fifteen hundred fifteen of the New York city charter.

(e) The department of finance may promulgate any rules:

(1) necessary to implement this article, including, but not limited to, rules:

(A) to address a change in ownership of a covered property or a residential cooperative dwelling unit, or illness or death of an owner of a covered property or residential cooperative dwelling unit;

(B) to authorize persons other than a covered owner to submit proof of primary residency on behalf of a covered owner;

(C) relating to requirements for provision of notice of surcharge; or

(D) to establish when a sale of a residential condominium dwelling unit, or a transfer of an economic interest in a residential cooperative dwelling unit, has occurred for purposes of paragraph two of subdivision (g) of section thirteen hundred fifty-one of this article.

(2) to establish penalties not exceeding fifty percent of the surcharge imposed on a covered property by this article if, after notice and a hearing, the department of finance determines that:

(A) any certification or documentation submitted to the department of finance contains inaccurate or misleading information that: (i) is material to the determination of the imposition of such surcharge, including a determination relating to primary residence; and (ii) was

submitted negligently or in bad faith; or

(B) a covered property that is a residential condominium unit has been divided into more than three units to avoid application of such surcharge and the owner of such covered property has made such division in bad faith.

(f) The department of finance may enforce and collect any penalty imposed pursuant to the authority set forth in subsection (e) of this section in the same manner as the department of finance enforces and collects the surcharge authorized by this article.

(g) The commissioner of the department of finance may subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the determination of the surcharge, including a determination relating to primary residence.

* NB Repealed June 30, 2031

*** § 1355. Administrative and judicial review.** (a) Notwithstanding any provision of law to the contrary, an owner of a covered property, or, in the case of a residential cooperative property, a residential cooperative dwelling unit, may seek administrative and judicial review of the imposition of the surcharge on such covered property or residential cooperative dwelling unit pursuant to the provisions of the administrative code imposing such surcharge.

(b) The remedies provided by the provisions of the administrative code imposing such surcharge shall be the exclusive remedies available to any person for the review of liability of the surcharge authorized by this article.

* NB Repealed June 30, 2031

*** § 1356. Information sharing.** A city having a population of one million or more imposing a surcharge pursuant to this article shall, upon request by the commissioner of taxation and finance, provide the department of taxation and finance with any records in its possession used or considered in determining whether a covered property, or, in the case of a residential cooperative property, a residential cooperative dwelling unit, is not a primary residence. The department of taxation

and finance shall, upon request by such city, provide such city with any records in its possession contained in any return filed pursuant to article thirty of this chapter or disclosed by any investigation of tax liability under such article for the purposes of implementing such surcharge. Information shared pursuant to this subsection shall not be subject to disclosure pursuant to article six of the public officers law.

* NB Repealed June 30, 2031

ARTICLE 31

REAL ESTATE TRANSFER TAX

- Section 1400. Short title.
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- 1422. Foreclosure proceedings.
- 1423. Modernization of real property transfer reporting.

§ 1400. Short title. This article shall be known and may be cited as the "real estate transfer tax law".

§ 1401. Definitions. When used in this article, unless otherwise expressly stated:

* (a) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

* NB Effective until July 1, 2021

* (a) (1) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

(2) "Person" shall include any individual, corporation, partnership or limited liability company or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, or a member, manager or employee of a limited liability company, who as such officer, employee, manager or member is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article, or has so acted.

* NB Effective July 1, 2021

(b) "Controlling interest" means (i) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the

capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(c) "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the state of New York. It shall not include rights to sepulture.

(d) "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(i) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include but not be limited to the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(ii) In the case of a creation of a subleasehold interest, consideration shall include but not be limited to the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(iii) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(iv) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(v) In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

(e) "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (i) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (ii) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading,

severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

(f) "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

(g) "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

(h) "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

(i) "Recording officer" means the county clerk of the county, except in a county having a register, where it means the register of the county, or in the city of New York where it means the city register.

§ 1402. Imposition of tax. (a) A tax is hereby imposed on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of two dollars for each five hundred dollars or fractional part thereof; provided, however, that with respect to (A) a conveyance of a one, two or three-family house and an individual residential condominium unit, or interests therein; and (B) conveyances where the consideration is less than five hundred thousand dollars, the consideration for the interest conveyed shall exclude the value of any lien or encumbrance remaining thereon at the time of conveyance. The rate of this tax shall be: (1) two dollars for each five hundred dollars or fractional part thereof on all conveyances of real property or interest therein; plus (2) an additional one dollar and

twenty-five cents for each five hundred dollars or fractional part thereof of consideration on each conveyance of real property or interest therein within any city in this state having a population of one million or more (i) when the consideration for the entire conveyance of residential real property is three million dollars or more, and (ii) when the consideration for the entire conveyance of any other property is two million dollars or more. For purposes of this section, residential real property shall include any premises that is or may be used in whole or in part as a personal residence, and shall include a one, two, or three-family house, an individual condominium unit, or a cooperative apartment unit.

(b) (1) Notwithstanding the provisions of subdivision (a) of this section, in the case of any real estate investment trust transfer occurring on or after the effective date of this subdivision, the tax imposed under subdivision (a) of this section shall be imposed at the rate of one dollar for each five hundred dollars or fractional part thereof of consideration.

(2) (A) For purposes of this subdivision, the term "real estate investment trust" (hereinafter referred to as a "REIT") shall have the same meaning as in section 856 of the internal revenue code.

(B) For purposes of this subdivision, the phrase "real estate investment trust transfer" shall mean any conveyance of real property or an interest therein to a REIT, or to a partnership or corporation in which a REIT owns a controlling interest immediately following the conveyance, which conveyance (I) occurs in connection with the initial formation of the REIT, provided that the conditions set forth in clauses (i) and (ii) of this subparagraph are satisfied, or (II) in the case of any real estate investment trust transfer occurring on or after July thirteenth, nineteen hundred ninety-six and before September first, two thousand twenty-nine, is described in the last sentence of this subparagraph.

(i) The value of the ownership interests in the REIT, or in a partnership or corporation in which the REIT owns a controlling interest, received by the grantor as consideration for such conveyance must be equal to an amount not less than forty percent of the value of the equity interest in the real property or interest therein conveyed by the grantor to the grantee and such ownership interests must be retained

by the grantor or owners of the grantor for a period of not less than two years following the date of conveyance; provided, however, that in the case of the death of the grantor or an owner of the grantor within such two year period, this two year retention requirement shall be deemed to be satisfied notwithstanding any conveyance of such ownership interests held by such individual as a result of such death. The value of the equity interest in such real property or interest therein shall be computed by subtracting from the consideration for the conveyance (determined in accordance with paragraph three of this subdivision) the unpaid balance of any loans secured by mortgages or other encumbrances which are liens on the real property or interest therein immediately before the conveyance. For purposes of this computation, in the case of a conveyance of real property or interest therein other than a transfer or an acquisition of a controlling interest, the amount of the unpaid balance of any loans secured by mortgages or other encumbrances to be subtracted from consideration is determined by multiplying the total unpaid balance of any loans secured by mortgages or other encumbrances on the real property or interest therein by the percentage of the ownership interest in the real property or interest therein being conveyed to the grantee. In the case of a conveyance which is a transfer or an acquisition of a controlling interest, such amount to be subtracted is equal to the sum of the following amounts: (I) a reasonable apportionment to the interests in real property owned by the entity of the amount of any loans secured by encumbrances on the ownership interests in the entity which are being transferred or acquired and (II) the amount of any loans secured by mortgages or other encumbrances on the real property of the entity multiplied by the percentage interest in the entity which is being transferred or acquired. Provided, however that, for purposes of this computation, any mortgages or other encumbrances on the real property or interest therein which are created in contemplation of the initial formation of the REIT or in contemplation of the conveyance of such real property or interest therein to the REIT or to a partnership or corporation in which the REIT owns a controlling interest immediately following the conveyance shall not be considered.

(ii) Seventy-five percent or more of the cash proceeds received by such REIT from the sale of ownership interests in such REIT upon its

initial formation must be used: (I) to make payments on loans secured by any interest in real property (including an ownership interest in an entity owning real property) which is owned directly or indirectly by such REIT; (II) to pay for capital improvements to real property or any interest therein owned directly or indirectly by such REIT; (III) to pay costs, fees, and expenses (including brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease) incurred in connection with the creation of a leasehold or sublease pertaining to real property or any interest therein owned directly or indirectly by such REIT; (IV) to acquire any interest in real property (including an ownership interest in any entity owning real property), apart from any acquisition to which a reduced rate of tax is applicable pursuant to this subdivision (without regard to this clause); or (V) for reserves established for any of the purposes described in subclause (I), (II) or (III) of this clause. For purposes of this clause, the term real property shall include real property wherever located.

If a conveyance otherwise described in this subparagraph occurs other than in connection with the initial formation of a REIT, the condition set forth in clause (ii) of this subparagraph shall be disregarded and such conveyance shall constitute a "real estate investment trust transfer" if the condition set forth in clause (i) of this subparagraph would be satisfied if "fifty percent" were substituted for "forty percent" therein.

(3) For purposes of measuring consideration under this subdivision, the fair market value of the real property or interest therein being conveyed shall be calculated by dividing (i) the net cash flow from operations with respect to such real property for the twelve-month period ending on the last day of the second month preceding the date of the conveyance by (ii) the sum of (A) the federal long-term rate compounded semi-annually that is determined by the United States secretary of the treasury under section 1274(d) of the internal revenue code in effect thirty days prior to the date of the conveyance and (B) two percentage points. Provided however, if the commissioner of taxation and finance determines that either the amount in clause (i) of this paragraph or clause (ii) of this paragraph does not result in an

accurate representation of the fair market value of such real property or interest therein as such value is to be determined under this paragraph, the commissioner may adjust either of such amounts. In lieu of utilizing the method prescribed in this paragraph for determining fair market value, the taxpayer may utilize any method for determining fair market value that the commissioner of taxation and finance has prescribed in rules or regulations or otherwise.

§ 1402-a. Additional tax. (a) In addition to the tax imposed by section fourteen hundred two of this article, a tax is hereby imposed on each conveyance of residential real property or interest therein when the consideration for the entire conveyance is one million dollars or more. For purposes of this section, residential real property shall include any premises that is or may be used in whole or in part as a personal residence, and shall include a one, two, or three-family house, an individual condominium unit, or a cooperative apartment unit. The rate of such tax shall be one percent of the consideration or part thereof attributable to the residential real property. Such tax shall be paid at the same time and in the same manner as the tax imposed by section fourteen hundred two of this article.

(b) Notwithstanding the provisions of subdivision (a) of section fourteen hundred four of this article, the additional tax imposed by this section shall be paid by the grantee. If the grantee has failed to pay the tax imposed by this article at the time required by section fourteen hundred ten of this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

(c) Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration, collection, determination and distribution of the tax imposed by section fourteen hundred two of this article shall apply to the tax imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those

provisions had been set forth in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section.

§ 1402-b. Supplemental tax in cities having a population of one million or more. (a) In addition to the taxes imposed by sections fourteen hundred two and fourteen hundred two-a of this article, a tax is hereby imposed on each conveyance of residential real property or interest therein within any city in this state having a population of one million or more when the consideration for the conveyance is two million dollars or more. For purposes of this section, residential real property shall include any premises that is or may be used in whole or in part as a personal residence, and shall include a one, two, or three-family house, an individual condominium unit, or a cooperative apartment unit. Such tax shall be paid at the same time and in the same manner as the taxes imposed by sections fourteen hundred two and fourteen hundred two-a of this article.

The rate of such tax shall be:

(1) one-quarter of one percent of the consideration or part thereof attributable to the residential real property when such consideration for the entire conveyance is at least two million dollars but less than three million dollars;

(2) one-half of one percent of the consideration or part thereof attributable to the residential real property when such consideration for the entire conveyance is at least three million dollars but less than five million dollars;

(3) one and one-quarter percent of the consideration or part thereof attributable to the residential real property when such consideration for the entire conveyance is at least five million dollars but less than ten million dollars;

(4) two and one-quarter percent of the consideration or part thereof attributable to the residential real property when such consideration for the entire conveyance is at least ten million dollars but less than fifteen million dollars;

(5) two and one-half percent of the consideration or part thereof

attributable to the residential real property when such consideration for the entire conveyance is at least fifteen million dollars but less than twenty million dollars;

(6) two and three-quarters percent of the consideration or part thereof attributable to the residential real property when such consideration for the entire conveyance is at least twenty million dollars but less than twenty-five million dollars; and

(7) two and nine-tenths percent of the consideration or part thereof attributable to the residential real property when such consideration for the entire conveyance is at least twenty-five million dollars.

(b) Notwithstanding the provisions of subdivision (a) of section fourteen hundred four of this article, the tax imposed by this section shall be paid by the grantee. If the grantee has failed to pay the tax imposed by this article at the time required by section fourteen hundred ten of this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

(c) Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration, collection, determination and distribution of the tax imposed by section fourteen hundred two of this article shall apply to the tax imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section.

§ 1404. Liability for tax. * (a) The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed by this article at the time required by section fourteen hundred ten of this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

* NB Effective until July 1, 2021

* (a) The real estate transfer tax imposed pursuant to section fourteen hundred two of this article shall be paid by the grantor and such tax shall not be payable, directly or indirectly, by the grantee except as provided in a contract between grantor and grantee or as otherwise provided in this section. If the grantor has failed to pay the tax imposed by this article at the time required by section fourteen hundred ten of this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee; provided that in the event of such failure, the grantee shall have a cause of action against the grantor for recovery of payment of such tax, interest and penalties by the grantee. In the case of a conveyance of residential real property as defined in subdivision (a) of section fourteen hundred two-a of this article, if the tax imposed by this article is paid by the grantee pursuant to a contract between the grantor and the grantee, the amount of such tax shall be excluded from the calculation of consideration subject to tax under this article.

* NB Effective July 1, 2021

(b) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1405. Exemptions. (a) The following shall be exempt from payment of the real estate transfer tax:

1. The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

2. The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

(b) The tax shall not apply to the following conveyances:

1. Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

2. Conveyances which are or were used to secure a debt or other obligation;

3. Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

4. Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

5. Conveyances given in connection with a tax sale;

6. Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

7. Conveyances which consist of a deed of partition;

8. Conveyances given pursuant to the federal bankruptcy act;

9. Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such

property or the granting of an option to purchase real property without the use or occupancy of such property;

10. Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

11. Conveyances of real property located in tax-free NY areas approved pursuant to article twenty-one of the economic development law to businesses located in such areas that are participating in the START-UP NY program pursuant to such article twenty-one.

(c) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, parks or historic preservation purposes shall be exempt from payment of additional taxes imposed pursuant to section fourteen hundred two-a of this article.

§ 1405-A. Credit. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1405-B. Cooperative housing corporation transfers. (a)

Notwithstanding the definition of "controlling interest" contained in subdivision (b) of section fourteen hundred one of this article or anything to the contrary contained in subdivision (e) of section fourteen hundred one of this article, the tax imposed by this article shall apply to (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph one of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph one of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph one of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months

prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph one of this subdivision.

(b) Every cooperative housing corporation shall be required to file an information return with the commissioner of taxation and finance by July fifteenth of each year covering the preceding period of January first through June thirty-first and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the commissioner may deem necessary, including but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance. The commissioner of taxation and finance may enter into an agreement with the chief fiscal officer of the city of New York to provide that a single information return may be filed for purposes of the tax imposed by this article and the real property transfer tax imposed by such city.

(c) The information contained within information returns filed under subdivision (b) of this section may be provided by the commissioner to local assessors for use in real property tax administration, and such information shall not be subject to the secrecy provisions set forth in section fourteen hundred eighteen of this chapter, provided, however, that the commissioner shall not disclose social security numbers or employer identification numbers.

§ 1406. Preparation and sale of stamps. (a) The tax commission shall prepare adhesive documentary stamps for purposes of the real estate transfer tax of such design, in such form, in such denominations and in such quantities as it may from time to time deem advisable. The tax commission shall make provision for the sale of such stamps by its duly authorized agent or agents in such places, at such times and subject to such terms and conditions as in its judgment may be necessary.

(b) The tax commission may from time to time and as often as it deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. In order to

make such a change and discontinue the use of stamps of a former design, the tax commission shall publish once in each week for each of three months immediately preceding the time when such change shall take effect, in one or more daily newspapers published in each of the first and second class cities of the state, a notice to the effect that after a certain date, which shall be at least three months after the first publication of such notice, only the new issue or design of stamps shall be accepted or used to pay the real estate transfer tax. After such date, it shall be unlawful for any person to make use of any other than the new issue or design of stamps in payment of such tax.

(c) Any person lawfully in possession of unused stamps of an old or superseded issue or design may, within ninety days from the time when such change becomes effective, surrender the unused stamps to the tax commission together with a sworn statement setting forth the name and address of the owner and party surrendering the stamps, how, when and from whom they were acquired and such other information as the tax commission may require. The tax commission shall redeem such unused and surrendered stamps by exchanging stamps of a like denomination of the new issue or design for them.

(d) Notwithstanding the provisions of sections seven and eight of the state printing law, the tax commission is hereby directed to make, enter into and execute for and on behalf of the state such contract or contracts for dyes, plates and printing necessary for the manufacture of the stamps provided for by this article. The tax commission shall be the custodian of all stamps, dyes, plates or other material or thing furnished by it and used in the manufacture of such state tax stamps.

(e) This section shall not apply to the extent the commissioner of taxation and finance chooses not to use documentary stamps for purposes of this tax.

§ 1407. Designation of agents. (a) The commissioner of taxation and finance is authorized to designate such banks, trust companies, savings banks, New York state branches of a foreign bank, industrial banks, savings and loan associations, national banking associations, federal savings and loan associations, title insurance corporations and recording officers as he shall deem necessary to act as his agent for

purposes of collecting the tax imposed by this article. The commissioner of taxation and finance shall provide for the manner in which any such person may be designated as his agent subject to such terms and conditions as he shall prescribe. The real estate transfer tax shall be paid to such agents as provided in section fourteen hundred ten of this article. At the time such a person shall be designated as an agent of the commissioner of taxation and finance, the commissioner of taxation and finance shall prescribe whether such agent shall collect the real estate transfer tax through the sale of documentary stamps, through the use of a metering machine, by any other method which the commissioner of taxation and finance, by regulation, may provide, or by one or more of such methods.

(b) Every person designated to act as an agent pursuant to subdivision (a) of this section shall remit to the commissioner of taxation and finance any funds collected by such agent and any returns filed with such agent under this article, less any fee allowed under subdivision (c) of this section, at such times as the commissioner of taxation and finance shall prescribe and shall follow such procedures and keep such records as the commissioner of taxation and finance may prescribe. Each county (other than the counties comprising New York city) and New York city shall pay all expenses occasioned by the duties of their respective recording officers to collect the tax imposed by this article, including any expense for extra clerks.

(c) 1. When a recording officer designated to act as such agent is presented with a conveyance for recording that is accompanied by a receipt issued by the commissioner pursuant to subdivision (c) of section fourteen hundred twenty-three of this article, such recording officer shall be relieved of the responsibility to collect the real estate transfer tax thereon. He or she shall nonetheless be entitled to the portion of such tax that he or she would otherwise have retained pursuant to this subdivision, as provided by subdivision (b) of section fourteen hundred twenty-three of the tax law.

2. When a recording officer is presented with a conveyance for recording that is not accompanied by a receipt described in paragraph one of this subdivision, he or she shall collect the applicable real estate transfer tax and shall retain, from the real estate transfer tax

which he or she collects, the sum of one dollar for each of the first five thousand conveyances accepted for recording and for which he or she has issued a documentary stamp or metering machine stamp or upon which instrument effecting the conveyance he or she has noted payment of the tax or that no tax is due, pursuant to any other method for payment of the tax provided for in the regulations of the commissioner of taxation and finance, during each annual period commencing on the first day of August and ending on the next succeeding thirty-first day of July and seventy-five cents for each conveyance in excess of five thousand accepted for recording and for which he or she has issued such a stamp or upon which instrument effecting the conveyance he or she has noted payment of the tax or that no tax is due, pursuant to such other method, during such annual period. Such fee shall be payable even though the stamp issued or such notation shows that no tax is due. Such a fee paid to the register of the city of New York shall belong to the city of New York and such a fee paid to a recording officer of a county outside such city shall belong to such officer's county. With respect to any other agents designated to act pursuant to subdivision (a) of this section, the commissioner of taxation and finance shall have the power to provide, at his or her discretion, for payment of a fee to such agent, in such manner and amount and subject to such limitations as he or she may determine, but any such fee for any annual period shall not be greater than the sum of one dollar for each of the first five thousand conveyances for which such agent has issued a documentary stamp or metering machine stamp or upon which instrument effecting the conveyance he or she has noted payment of the tax or that no tax is due, pursuant to any other method for payment of the tax provided for in the regulations of the commissioner of taxation and finance, during such annual period and seventy-five cents for each conveyance in excess of five thousand for which such agent has issued such a stamp or upon which instrument effecting the conveyance such agent has noted payment of the tax or that no tax is due, pursuant to such other method, during such annual period.

§ 1408. Liability of recording officer. A recording officer or any other person designated to act as agent pursuant to section fourteen

hundred seven of this article shall not be liable under this section for any inaccuracy in the amount of tax he shall collect under this article so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amount is stated on the return required to be filed pursuant to section fourteen hundred nine of this article.

§ 1409. Returns. (a) (1) A joint return shall be filed by both the grantor and the grantee for each conveyance whether or not a tax is due thereon other than a conveyance of an easement or license to a public utility as defined in subdivision two of section one hundred eighty-six-a of this chapter or to a public utility which is a provider of telecommunication services as defined in subdivision one of section one hundred eighty-six-e of this chapter, where the consideration is two dollars or less and is clearly stated as actual consideration in the instrument of conveyance.

(2) When the grantor or grantee of a deed for a building used as residential real property containing up to four family dwelling units is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any limited liability company or other business entity that are to be the members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity other than a publicly traded entity, a REIT, a UPREIT, or a mutual fund, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved. For purposes of this subdivision, the terms "members",

"managers", "authorized person", "limited liability company" and "other business entity" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

(3) The return shall be filed with the recording officer before the instrument effecting the conveyance may be recorded. However, if the tax is paid to the commissioner pursuant to section fourteen hundred ten of this article, the return shall be filed with such commissioner at the time the tax is paid. In that instance, a receipt evidencing the filing of the return and the payment of tax shall be filed with the recording officer before the instrument effecting the conveyance may be recorded. The recording officer shall handle such receipt in the same manner as a return filed with the recording officer.

(b) Subject to the provisions of section fourteen hundred twenty-three of this article, the return shall be signed by both the grantor and the grantee. Where a conveyance has more than one grantor or more than one grantee, the return shall be signed by all of such grantors and grantees. Where any or all of the grantors or any or all of the grantees have failed to sign a return, it shall be accepted as a return if signed by any one of the grantors or by any one of the grantees. Provided, however, those not signing the return shall not be relieved of any liability for the tax imposed by this article and the period of limitations for assessment of tax or of additional tax shall not apply to any such party.

(c) Returns shall be preserved for three years and thereafter until the commissioner of taxation and finance permits them to be destroyed.

(d) The commissioner shall prescribe the form of the return, the information which it shall contain and the documentation that shall accompany the return. The commissioner shall prescribe that, for recorded conveyances, such return shall be included on the form required to be filed with a conveyance of real property by section two hundred fifty-three-b of this chapter and the regulations promulgated thereunder, except that such commissioner may prescribe a supplemental form for purposes of the tax imposed by this article when the conveyance is pursuant to or in lieu of foreclosure or the conveyance consists in part of a mere change of identity or form of ownership or organization or the conveyance is one for which a credit for tax previously paid will be claimed. In addition, the commissioner, in the commissioner's

discretion, may enter into an agreement with the chief fiscal officer of the cities of New York, Yonkers or Mount Vernon to provide that a single return may be filed with a recording officer for purposes of the tax imposed under this article and the tax imposed by such city.

(e) Certifications. The making or filing of any return or other document or copy thereof, required to be made or filed pursuant to this article, shall constitute a certification by the person making or filing such return or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 1410. Payment. (a) The tax imposed hereunder shall be paid to the commissioner, or to any agent of the commissioner appointed pursuant to section fourteen hundred seven of this article, no later than the fifteenth day after the delivery of the instrument effecting the conveyance by the grantor to the grantee. For purposes of this article, the date of the instrument effecting the conveyance shall be presumed to be the date of delivery of such instrument. A notation shall be made (or stamps affixed) on the instrument effecting the conveyance as evidence of payment. The commissioner may provide for other methods of evidencing payment. Except as hereafter provided, all moneys received as such payments by the recording officer or any agent of the commissioner during each month, excluding the fees retained by such recording officer or agent pursuant to subdivision (c) of section fourteen hundred seven of this chapter, shall be remitted to the commissioner on the tenth day of the succeeding month or on such other day as is set by regulation by the commissioner. Provided, however, if the total of such payments required to be remitted to the commissioner by such recording officer or agent during the prior calendar year exceeded one million two hundred thousand dollars, all moneys received as such payments by such recording officer or agent of the commissioner from the first through and including the fifteenth day of a month, excluding the fees retained by such recording officer or agent pursuant to subdivision (c) of section fourteen hundred seven of this chapter, shall be remitted to the commissioner on the twenty-fifth day of the same month such moneys are received by such recording officer or agent. All moneys received as such payments by such recording officer or agent from the sixteenth through

and including the last day of the month, excluding the fees retained by such recording officer or agent pursuant to subdivision (c) of section fourteen hundred seven of this chapter, shall be remitted to the commissioner on the tenth day of the succeeding month.

(b) A recording officer shall not record an instrument effecting a conveyance unless one of the following conditions is satisfied:

(1) the instrument is accompanied by a receipt issued by the commissioner pursuant to subdivision (c) of section fourteen hundred twenty-three of this article; or

(2) the return required by section fourteen hundred nine of this article has been filed and the real estate transfer tax due, if any, shall have been paid as provided in this section.

§ 1411. Determination of tax. (a) If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of taxation and finance from such records or information as may be obtainable, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, shall petition the division of tax appeals for a hearing, or unless the commissioner of taxation and finance of the commissioner's own motion shall redetermine the same. In any case before the division of tax appeals under this article, the burden of proof shall be on the petitioner. After such hearing, the division of tax appeals shall give notice of the determination of the administrative law judge to the person against whom the tax is assessed and the commissioner of taxation and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter. A proceeding for judicial review shall not be instituted unless: (1) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of

taxation and finance and there shall be filed with the commissioner of taxation and finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or (2) at the option of the petitioner, such undertaking filed with the commissioner of taxation and finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision, plus the costs and charges which may accrue against him in the prosecution of the proceeding, in which event the petitioner shall not be required to deposit such taxes, penalties and interest as a condition precedent to the commencement of the proceeding.

(b) A person liable for the tax imposed by this article (whether or not a determination assessing a tax pursuant to subdivision (a) of this section has been issued) shall be entitled to have a tax due finally and irrevocably fixed prior to the ninety-day period referred to in subdivision (a) of this section, by filing with the commissioner of taxation and finance a signed statement in writing in such form as the commissioner of taxation and finance shall prescribe, consenting thereto.

§ 1412. Refunds. (a) A grantor or grantee claiming to have erroneously paid the tax imposed by this article or some other person designated by such grantor or grantee may file an application for refund within two years from the date of payment. Such application shall be filed with the commissioner of taxation and finance on a form which he shall prescribe.

(b) The commissioner of taxation and finance may grant or deny such application in whole or in part and shall notify the applicant by mail accordingly. Such determination shall be final and irrevocable unless the applicant shall, within ninety days after the mailing of notice of such determination, petition the division of tax appeals for a hearing. After such hearing, the administrative law judge shall mail notice of its determination to the applicant and to the commissioner of taxation

and finance. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter. A proceeding for judicial review shall not be instituted unless an undertaking is filed with the commissioner of taxation and finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(c) A person shall not be entitled to a refund under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section fourteen hundred eleven of this article where he has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself of the remedies therein provided. However, a person filing with the commissioner of taxation and finance a signed statement in writing, as provided in subdivision (b) of section fourteen hundred eleven of this article, before a determination assessing tax, pursuant to subdivision (a) of section fourteen hundred eleven, is issued, shall, nevertheless, be entitled to apply for a refund pursuant to subdivisions (a) and (b) of this section, as long as such application is made within the time limitation set forth in such subdivision (a). No refund shall be made of a tax, interest or penalty paid after a determination by the commissioner of taxation and finance made pursuant to section fourteen hundred eleven unless it is found that such determination was erroneous, illegal or unconstitutional or otherwise improper after review by the tax appeals tribunal or of the commissioner of taxation and finance's own motion, or in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of section two thousand sixteen of this chapter, in which event refund shall be made of the tax, interest or penalty found to have been overpaid.

(d) Interest shall be allowed and paid upon any refund made pursuant to this section except that no interest shall be allowed or paid if the amount thereof would be less than one dollar. Such interest shall be at the overpayment rate set pursuant to section fourteen hundred sixteen of this article and shall have like application, or if no rate is set, at

the rate of six per centum per annum from the date when the tax, penalty or interest refunded was paid to a date preceding the date of the refund check by not more than thirty days. Provided, however, for purposes of this subdivision any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day.

§ 1413. Remedies exclusive. The remedies provided by sections fourteen hundred eleven and fourteen hundred twelve of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article. No determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by any action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding under article seventy-eight of the civil practice law and rules.

§ 1414. Proceedings to recover tax. (a) Whenever any person shall fail to pay any tax, penalty or interest imposed by this article, the attorney general shall, upon the request of the commissioner of taxation and finance, bring or cause to be brought an action to enforce the payment of the same on behalf of the state of New York in any court of the state of New York or of any other state or of the United States.

(b) As an additional or alternate remedy, the commissioner of taxation and finance may issue a warrant, directed to the sheriff of any county commanding him to levy upon and sell the real and personal property of any grantor or grantee liable for the tax, which may be found within his county, for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of taxation and finance and to pay the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued and the date when

such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed in the department of state. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the commissioner of taxation and finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the division of taxation, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the commissioner of taxation and finance shall have the same remedies to enforce the amount due thereunder as if the state had recovered the judgment therefor.

§ 1415. General powers of the commissioner of taxation and finance.

The commissioner of taxation and finance shall have the power: (a) to administer and enforce the tax imposed by this article and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provisions of this article.

(b) For the purposes of ascertaining the correctness of any return, or for the purpose of making an estimate of tax of any return, or for the purpose of making an estimate of tax of any person, to examine or to cause to have examined, by any agent or representative designated by the commissioner for that purpose, any books, papers, records or memoranda related to the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge of the matters included in the return, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

(c) To extend, for cause shown, the time of filing any return for a period not exceeding three months.

(d) To prescribe the methods for determining the consideration and net consideration attributable to that portion of real property located partly within and partly without the state of New York which is located within the state of New York or any interest therein.

(e) To require any grantor or grantee to keep such records, and for such length of time as may be required for the proper administration of this title and to furnish such records to the commissioner of taxation and finance upon request.

(f) The commissioner of taxation and finance, of the commissioner's own motion, may abate any small unpaid balance of an assessment of the tax to be levied hereunder, or any liability in respect thereof, if such commissioner determines under uniform rules prescribed by the commissioner that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of the commissioner's own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

§ 1416. Interest and civil penalties. (a) If the commissioner of taxation and finance determines that there has been an overpayment of tax, interest at the overpayment rate set by the commissioner shall be paid by the comptroller to the grantor or grantee, on any refund paid pursuant to the provisions of section fourteen hundred twelve of this article. If the commissioner determines that there has been an underpayment of tax, the grantor or grantee shall pay interest to the commissioner at the underpayment rate set by the commissioner on the amount of any tax not paid. The commissioner shall set the rates of interest to be paid on underpayment and overpayment of the taxes imposed by this article at the underpayment and overpayment rates of interest prescribed in subsection (e) of section one thousand ninety-six of this chapter.

(b) Any grantor or grantee failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of ten per centum of the amount of tax due plus an interest penalty of two per centum of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due, such interest penalty shall not exceed twenty-five per centum in the aggregate. If the commissioner of taxation and finance determines that such failure or delay was due to reasonable cause and not due to willful neglect, the commissioner shall remit, abate or waive all of such penalty and such interest penalty.

(c) If any amount of tax is not paid on or before the last date prescribed in section fourteen hundred ten of this chapter for payment, interest at the underpayment rate set by the commissioner on such amount shall be paid for the period from such last date to the date paid. The commissioner shall set the rate of interest to be paid at the underpayment rate of interest prescribed in subsection (e) of section one thousand ninety-six of this chapter. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(d) The penalties and interest provided for in this section shall be paid to the commissioner of taxation and finance and shall be determined, assessed, collected and distributed in the same manner as the tax imposed by this article and any reference to tax in this article shall be deemed to refer to the penalties and interest imposed in this section.

§ 1417. Criminal penalties. For criminal penalties, see article thirty-seven of this chapter.

§ 1418. Returns to be secret. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the tax appeals tribunal, the commissioner of taxation and finance, any officer or employee of the department of taxation and finance, any person engaged or retained by such department on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or a portion of any

return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner the particulars set forth or disclosed in any return required under this article. Provided, however, that nothing in this section shall prohibit a recording officer from making a notation, or affixing stamps, on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

(b) The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of taxation and finance in any action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner of taxation and finance is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

(c) Notwithstanding the provisions of subdivision (a) of this section, the commissioner of taxation and finance may permit the secretary of the treasury of the United States or his delegates, or the proper tax officer of any city imposing a similar tax, or the authorized representative of either such officer, to inspect any return filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply him with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article, but such permission shall be granted or such information furnished only if the laws of the United States or of such city, as the case may be, grant substantially similar privileges to the commissioner of taxation and finance or officer of this state charged with the administration of the tax imposed by this article, and only if such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the commissioner of internal revenue or his

authorized representative such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury of the United States or his delegates, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his delegates. Where the commissioner of taxation and finance has so authorized the use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

(d) The tax appeals tribunal shall, nevertheless, publish a copy or a summary of any decision rendered after the hearing required pursuant to this chapter.

(e) Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or the attorney general or has been instituted, or the inspection of the returns required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a taxpayer under this article.

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

(g) Cross-reference. For criminal penalties, see article thirty-seven of this chapter.

(h) Notwithstanding the provisions of subdivision (a) of this section,

the commissioner may furnish information relating to real property transfers obtained or derived from returns filed pursuant to this article in relation to the real estate transfer tax, to the extent that such information is also required to be reported to the commissioner by section three hundred thirty-three of the real property law and section five hundred seventy-four of the real property tax law and the rules adopted thereunder, provided such information was collected through a combined process established pursuant to an agreement entered into with the commissioner pursuant to paragraph viii of subdivision one-e of section three hundred thirty-three of the real property law. The commissioner may redisclose such information to the extent authorized by section five hundred seventy-four of the real property tax law. The commissioner may also disclose any information reported pursuant to paragraph two of subdivision (a) of section fourteen hundred nine of this article.

(i) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns filed specified in such request that were under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the

position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 1419. Notices. (a) Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this article, in any application made by him, or in any instrument evidencing the conveyance which is the subject of the notice, or, if no return has been filed or application made or address stated in the instrument, then to such address as may be obtainable. A

notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this title by the giving of notice shall commence to run from the date of mailing of such notice.

(b) (1) If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the commissioner of taxation and finance, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of taxation and finance, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of taxation and finance, bureau, office, officer or person to which or to whom addressed. To the extent that the commissioner of taxation and finance shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by regulation of the commissioner of taxation and finance.

(2)(A) Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph one of this

subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner finds that any delivery service designated by such secretary is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this article, or may withdraw any such designation if he finds that a delivery service so designated is inadequate for the needs of the state. Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner and any reference in paragraph one of this subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner pursuant to the same criteria used by such secretary for such designation pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subdivision. If the commissioner finds that any equivalent of registered or certified mail designated by such secretary or the commissioner is inadequate for the needs of the state, the commissioner may withdraw such designation for purposes of this article.

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

§ 1420. Limitations of time. (a) The provisions of the civil practice

law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the state or the commissioner of taxation and finance to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this article. No assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law or in the case of a willfully false or fraudulent return, the tax may be assessed at any time.

(b) Where, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for a refund pursuant to section fourteen hundred twelve shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax.

§ 1421. Deposit and dispositions of revenues. (a) From the taxes, interest and penalties attributable to the tax imposed pursuant to section fourteen hundred two of this article, the amount of one hundred ninety-nine million three hundred thousand dollars shall be deposited by the comptroller in the environmental protection fund established pursuant to section ninety-two-s of the state finance law for the fiscal year beginning April first, two thousand nine; the amount of one hundred nineteen million one hundred thousand dollars shall be deposited in such fund for the fiscal year beginning April first, two thousand ten; the amount of two hundred fifty-seven million three hundred fifty thousand dollars shall be deposited into such fund for the fiscal year beginning April first, two thousand twenty-two; and for each fiscal year thereafter. On or before June twelfth, nineteen hundred ninety-five and on or before the twelfth day of each month thereafter (excepting the first and second months of each fiscal year), the comptroller shall

deposit into such fund from the taxes, interest and penalties collected pursuant to such section fourteen hundred two of this article which have been deposited and remain to the comptroller's credit in the banks, banking houses or trust companies referred to in section one hundred seventy-one-a of this chapter at the close of business on the last day of the preceding month, an amount equal to one-tenth of the annual amount required to be deposited in such fund pursuant to this section for the fiscal year in which such deposit is required to be made. In the event such amount of taxes, interest and penalties so remaining to the comptroller's credit is less than the amount required to be deposited in such fund by the comptroller, an amount equal to the shortfall shall be deposited in such fund by the comptroller with subsequent deposits, as soon as the revenue is available. Beginning April first, nineteen hundred ninety-seven, the comptroller shall transfer monthly to the clean water/clean air fund established pursuant to section ninety-seven-bbb of the state finance law, all moneys remaining from such taxes, interest and penalties collected that are not required for deposit in the environmental protection fund.

(b) Notwithstanding subdivision (a) of this section, the taxes, interest and penalties attributable to (i) the tax imposed under section fourteen hundred two of this article at the rate specified in paragraph two of subdivision (a) of such section, and (ii) the tax imposed under section fourteen hundred two-b of this article, and collected or received by the commissioner shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller in trust for the metropolitan transportation authority. An account may be established in one or more of such depositories. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds under this article. On or before the twelfth and twenty-sixth day of each succeeding month, after reserving such amount for such refunds, the commissioner shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest

and penalties so imposed. The amount of revenues so certified shall be paid over by the fifteenth and the final business day of each succeeding month from such account without appropriation into the central business district tolling capital lockbox fund established pursuant to section five hundred fifty-three-j of the public authorities law, provided, however, that the comptroller shall ensure that any payments to the central business district tolling capital lockbox fund established that are due to be paid by the final business day in the month of December pursuant to this subdivision shall be received by the central business district tolling capital lockbox fund on the same business day in which it is paid.

§ 1422. Foreclosure proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

§ 1423. Modernization of real property transfer reporting. (a) Notwithstanding any provision of law to the contrary, the commissioner is hereby authorized to implement a system for the electronic collection of data relating to transfers of real property. In connection therewith, the commissioner may combine the two forms referred to in paragraph one of this subdivision into a consolidated real property transfer form to be filed with him or her electronically; provided:

(1) The two forms that may be so combined are the real estate transfer tax return required by section fourteen hundred nine of this article, and the real property transfer report required by subdivision one-e of section three hundred thirty-three of the real property law. However, the commissioner shall continue to maintain both such return and such report as separate forms, so that a party who prefers not to file a consolidated real property transfer form with the commissioner electronically shall have the option of filing both such return and such report with the recording officer, as otherwise provided by law. Under

no circumstances shall a consolidated real property transfer form be filed with, or accepted by, the recording officer.

(2) Notwithstanding the provisions of section fourteen hundred eighteen of this article, any information appearing on a consolidated real property transfer form that is required to be included on the real property transfer report required by subdivision one-e of section three hundred thirty-three of the real property law shall be subject to public disclosure.

(3) When a consolidated real property transfer form is electronically submitted to the department by either the grantor or grantee or a duly authorized agent thereof, the act of submitting such form shall be deemed to be the signing of the return as required by paragraph (v) of subdivision one-e of the real property law or subdivision (b) of section fourteen hundred nine of this article, and the requirement that all the grantors and grantees shall sign the return shall not apply. However, the fact that a grantor or grantee has not electronically submitted the form shall not relieve that grantor or grantee of any liability for the tax imposed by this article.

(b) When a consolidated real property transfer form is filed with the commissioner electronically pursuant to this section, the real estate transfer tax imposed under this article, and the fee that would otherwise be retained by the recording officer pursuant to subdivision three of section three hundred thirty-three of the real property law, shall be paid to the commissioner therewith. The commissioner shall retain on behalf of the recording officer the portion of such tax that would otherwise have been retained by the recording officer pursuant to subdivision (c) of section fourteen hundred seven of this article, and the portion of such fee that would otherwise have been retained by the recording officer pursuant to subdivision three of section three hundred thirty-three of the real property law. The moneys so retained by the commissioner on behalf of the recording officer, hereinafter referred to as the recording officer's fees, shall be deposited daily with such responsible banks, banking houses, or trust companies as may be designated by the state comptroller. Of the recording officer's fees so deposited, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements of such fees collected or received pursuant to this

section, out of which the comptroller shall pay any refunds or reimbursements of such fees to which persons shall be entitled under the provisions of this section. The comptroller, after reserving such refund and reimbursement fund shall, on or before the twelfth day of each month, pay to the appropriate recording officers an amount equal to the recording officer's fees reserved on their behalf. Provided, however, that the commissioner is authorized to request that the comptroller refrain from making such a payment of such fees to a recording officer until the commissioner has certified to the comptroller that the recording officer has supplied the commissioner with the liber and page numbers of the recorded instruments that gave rise to such fees.

(c) The system for the electronic submission of consolidated real property transfer forms shall be designed so that upon the successful electronic filing of such a form and the payment of the associated taxes and fees, the party submitting the same shall be provided with an electronic receipt in a form prescribed by the commissioner that confirms such filing and payment. Such party may file a printed copy of such receipt with the recording officer when offering the associated instrument for recording, in lieu of submitting to the recording officer the return, report, tax and fee that would otherwise have been required under this article and subdivisions one-e and three of section three hundred thirty-three of the real property law. The recording officer shall retain such receipt for a minimum of three years, unless otherwise directed by the commissioner, and shall provide a copy thereof to the commissioner for inspection upon his or her request.

(d) Upon recording the instrument to which the consolidated real property transfer form pertains, the recording officer shall provide the commissioner with the liber and page thereof at such time and in such manner as the commissioner shall prescribe.

(e) The provisions of this section shall not be applicable within a city or county that has implemented its own electronic system for the recording of deeds, the filing of the real estate transfer tax returns and the real property transfer reports prescribed by the commissioner, and the payment of the associated taxes and fees, unless such city or county shall notify the commissioner that such jurisdiction will follow the system authorized pursuant to this section to be used therein, in writing.

ARTICLE 31-A
TAX ON REAL PROPERTY

TRANSFERS FOR TRANSPORTATION ASSISTANCE

- Section 1424. Definitions.
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§ 1424. Definitions. When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such

corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within Erie county. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include but not be limited to the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include but not be limited to the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the

ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not

include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Erie.

10. "Treasurer" means the commissioner of finance of the county of Erie.

§ 1425. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the county of Erie, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of two dollars and fifty cents for each five

hundred dollars or fractional part thereof; provided, however, that with respect to (A) a conveyance of a one, two or three-family house and an individual residential condominium unit, or interests therein; and (B) conveyances where the consideration is less than five hundred thousand dollars, the consideration for the interest conveyed shall exclude the value of any lien or encumbrance remaining thereon at the time of conveyance. Such local law shall apply to any conveyance occurring on or after June first, nineteen hundred ninety, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1426. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred thirty-four of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or

recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 1427. Liability for tax. 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1428. Exemptions. 1. The following shall be exempt from payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property owned and occupied as a principal residence by one or more persons, at least one of whom is sixty-two years of age or over, provided that such property was both owned and occupied by at least one of such persons for a period of at least one year prior to the date of transfer, and further provided that such exemption shall be limited to transfers of residential properties consisting of one or two dwelling units;

(j) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

(k) Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with

the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

§ 1428-a. Credit. 1. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

2. A grantor shall be allowed a credit against the tax due on a conveyance of real property under the following circumstances: (a) the grantor purchased the property without its being improved by residential premises, (b) the grantor improved it by the construction of residential premises thereon, and (c) the grantor subsequently sold such improved property. At the time of the first sale of the property after the making of the improvement, the grantor shall be allowed a credit equal to the amount of the tax actually paid on the conveyance immediately prior to the making of the improvement.

§ 1428-b. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred twenty-four of this article or anything to the contrary contained in subdivision five of section fourteen hundred twenty-four of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such

stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirty-first and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such

information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1429. Designation of agents. The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred twenty-six of this article.

§ 1430. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him by the person paying the tax.

§ 1431. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

§ 1432. Deposit and disposition of revenue. 1. (a) All taxes collected or received by the treasurer or his duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the

legislative body of Erie county which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that an officer of the county shall pay to the Niagara Frontier transportation authority all revenue deposited under this section. Such payment shall be made on the tenth day of each month for the preceding month.

(b) Distributions made to the Niagara Frontier transportation authority shall be used only for operations of mass transportation services provided by the Niagara Frontier transportation authority within the county of Erie. All such distributions shall be made in accordance with the provisions of a contract between the county of Erie and the Niagara Frontier Transit Metro System, Inc. Such contract may only be amended with the consent of the Niagara Frontier Transit Metro System, Inc. and when authorized by at least a two-thirds vote of the county legislature.

2. Notwithstanding the provisions of subdivision one of this section, on and after the first day of April, nineteen hundred ninety-three, distributions shall be paid into a repair reserve fund established by the county pursuant to section six-d of the general municipal law for the purpose of repair of county roads and bridges within such county.

§ 1433. Judicial review. 1. Any final determination of the amount of any tax payable under section fourteen hundred twenty-six of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon

as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, (i) that such proceeding is instituted within four months after the giving of the notice of such denial, (ii) that a final determination of tax due was not previously made, and (iii) that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 1434. Apportionment. The local law adopted by the legislative body of Erie county shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without Erie county.

§ 1435. Miscellaneous. The local law adopted by the legislative body

of Erie county may contain such other provisions as such legislative body deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1436. Returns to be secret. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of Erie County or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. Provided, however, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

(b) The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

(c) Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of

any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

(d) Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

§ 1437. Foreclosure proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* ARTICLE 31-A-1

TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF RED HOOK

Section 1438-a. Definitions.

1438-b. Imposition of tax.

1438-c. Payment of tax.

1438-d. Liability for tax.

1438-e. Exemptions.

1438-f. Credit.

1438-g. Cooperative housing corporation transfers.

1438-h. Designation of agents.

1438-i. Liability of recording officer.

1438-j. Refunds.

1438-k. Deposit and disposition of revenue.

1438-l. Judicial review.

1438-m. Apportionment.

1438-n. Miscellaneous.

1438-o. Returns to be secret.

1438-p. Foreclosure proceedings.

* **§ 1438-a. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Red Hook. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or

taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being

conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in

real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-h of the town law.

10. "Recording officer" means the county clerk of the county of Dutchess.

11. "Town" means the town of Red Hook, county of Dutchess.

12. "Treasurer" means the treasurer of the county of Dutchess.

13. "Town supervisor" means the town supervisor of the town of Red Hook.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-eight-b of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Repealed December 31, 2026

*** § 1438-b. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Red Hook, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of two percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred thirty-eight-e of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-h of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2026

*** § 1438-c. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or

recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2026

*** § 1438-d. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the

tax.

* NB Repealed December 31, 2026

* **§ 1438-e. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement,
(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable county, as determined by the office of real property services pursuant to section four hundred twenty-five of the real property tax law, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

* NB Repealed December 31, 2026

* **§ 1438-f. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2026

* **§ 1438-g. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-eight-a of this article or anything to the contrary contained in subdivision five of section fourteen hundred thirty-eight-a of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit

shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2026

* **§ 1438-h. Designation of agents.** The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-eight-c of this article.

* NB Repealed December 31, 2026

* **§ 1438-i. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed December 31, 2026

* **§ 1438-j. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such requirements as he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2026

* **§ 1438-k. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-eight-b of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section

eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred thirty-eight-b of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-eight-b of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-h of the town law.

* NB Repealed December 31, 2026

*** § 1438-1. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-eight-c of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or

officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2026

* **§ 1438-m. Apportionment.** A local law adopted by the town of Red Hook, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2026

* **§ 1438-n. Miscellaneous.** A local law adopted by the town of Red Hook, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2026

* **§ 1438-o. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this

section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2026

* **§ 1438-p. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or

article thirty-seven of this chapter.

* NB Repealed December 31, 2026

* ARTICLE 31-A-2

**TAX ON REAL ESTATE TRANSFERS
IN THE COUNTY OF COLUMBIA**

Section 1439-a. Definitions.

1439-b. Imposition of tax.

1439-c. Payment of tax.

1439-d. Liability for tax.

1439-e. Exemptions.

1439-f. Credit.

1439-g. Cooperative housing corporation transfers.

1439-h. Designation of agents.

1439-i. Liability of recording officer.

1439-j. Refunds.

1439-k. Deposit and disposition of revenue.

1439-l. Judicial review.

1439-m. Apportionment.

1439-n. Miscellaneous.

1439-o. Returns to be secret.

1439-p. Foreclosure proceedings.

* NB Repealed December 31, 2027

* NB There are 3 Article 31-A-2's

* **§ 1439-a. Definitions.** When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Columbia. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental

payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine

years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Columbia.

10. "Treasurer" means the commissioner of finance of the county of Columbia.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-a's

*** § 1439-b. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the county of Columbia, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of one dollar for each five hundred dollars or fractional part thereof, provided, however, that the first one hundred fifty thousand dollars of any single family residence shall be exempt from such tax. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such legislative body, which is not less than sixty days after the enactment of such local laws, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-b's

*** § 1439-c. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or

carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred thirty-nine-m of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-c's

*** § 1439-d. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-d's

*** § 1439-e. Exemptions.** 1. The following shall be exempt from payment

of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

(j) Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is

less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-e's

*** § 1439-f. Credit.** A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-f's

*** § 1439-g. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-nine-a of this article or anything to the contrary contained in subdivision five of section fourteen hundred thirty-nine-a of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the

owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the

cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-g's

*** § 1439-h. Designation of agents.** The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-nine-c of this article.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-h's

*** § 1439-i. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-i's

*** § 1439-j. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-j's

*** § 1439-k. Deposit and disposition of revenue.** All taxes collected or received by the treasurer or his or her duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the legislative body of the county of Columbia which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Columbia.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-k's

*** § 1439-l. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-c of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the

prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-l's

* **§ 1439-m. Apportionment.** The local law adopted by the legislative body of the county of Columbia shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the county of Columbia.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-m's

* **§ 1439-n. Miscellaneous.** The local law adopted by the legislative body of the county of Columbia may contain such other provisions as such legislative body deems necessary for the proper administration of the

tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-n's

*** § 1439-o. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Columbia or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a

grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-o's

* **§ 1439-p. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB There are 3 § 1439-p's

* NB Repealed December 31, 2027

* ARTICLE 31-A-2

**TAX ON REAL ESTATE TRANSFERS
IN THE TOWN OF CHATHAM**

Section 1439-a. Definitions.

1439-b. Imposition of tax.

1439-c. Payment of tax.

1439-d. Liability for tax.

1439-e. Exemptions.

1439-f. Credit.

1439-g. Cooperative housing corporation transfers.

1439-h. Designation of agents.

1439-i. Liability of recording officer.
1439-j. Refunds.
1439-k. Deposit and disposition of revenue.
1439-l. Judicial review.
1439-m. Apportionment.
1439-n. Miscellaneous.
1439-o. Returns to be secret.
1439-p. Foreclosure proceedings.

* NB Repealed December 31, 2027

* NB There are 3 Article 31-A-2's

*** § 1439-a. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Chatham. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative

plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air

space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-i of the town law.

10. "Recording officer" means the county clerk of the county of Columbia.

11. "Town" means the town of Chatham, county of Columbia.

12. "Treasurer" means the treasurer of the county of Columbia.

13. "Town supervisor" means the town supervisor of the town of Chatham.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-b of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the

latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-a's

*** § 1439-b. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Chatham, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of two percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred thirty-nine-e of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-i of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-b's

*** § 1439-c. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-c's

*** § 1439-d. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the

grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-d's

*** § 1439-e. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise

than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement,

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which

is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable county, as determined by the office of real property services pursuant to section four hundred twenty-five of the real property tax law, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-e's

*** § 1439-f. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-f's

*** § 1439-g. Cooperative housing corporation transfers. 1.** Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-nine-a of this article or anything to the contrary contained in subdivision five of

section fourteen hundred thirty-nine-a of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-g's

*** § 1439-h. Designation of agents.** The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-nine-c of this article.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-h's

*** § 1439-i. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-i's

* **§ 1439-j. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such requirements as he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-j's

* **§ 1439-k. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-b of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred thirty-nine-b of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-b of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in

such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-i of the town law.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-k's

*** § 1439-l. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-c of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount

as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-l's

* **§ 1439-m. Apportionment.** A local law adopted by the town of Chatham, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-m's

* **§ 1439-n. Miscellaneous.** A local law adopted by the town of Chatham,

pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-n's

*** § 1439-o. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-o's

*** § 1439-p. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB There are 3 § 1439-p's

* NB Repealed December 31, 2027

* ARTICLE 31-A-2

**TAX ON REAL ESTATE TRANSFERS
IN THE TOWN OF FISHKILL**

Section 1439-a. Definitions.

1439-b. Imposition of tax.

1439-c. Payment of tax.

1439-d. Liability for tax.

1439-e. Exemptions.

1439-f. Credit.

1439-g. Cooperative housing corporation transfers.

1439-h. Designation of agents.

1439-i. Liability of recording officer.

1439-j. Refunds.

1439-k. Deposit and disposition of revenue.

1439-l. Judicial review.

1439-m. Apportionment.

1439-n. Miscellaneous.

1439-o. Returns to be secret.

1439-p. Foreclosure proceedings.

* NB Repealed December 31, 2027

* NB There are 3 Article 31-A-2's

*** § 1439-a. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or

hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Fishkill. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-i of the town law.

10. "Recording officer" means the county clerk of the county of Dutchess.

11. "Town" means the town of Fishkill, county of Dutchess.

12. "Treasurer" means the treasurer of the county of Dutchess.

13. "Town supervisor" means the town supervisor of the town of Fishkill.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-b of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-a's

*** § 1439-b. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Fishkill, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of two percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred thirty-nine-e of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-i of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-b's

*** § 1439-c. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-c's

*** § 1439-d. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-d's

*** § 1439-e. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement,

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the

conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable county, as determined by the office of real property services pursuant to section four hundred twenty-five of the real property tax law, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-e's

* **§ 1439-f. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-f's

* **§ 1439-g. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-nine-a of this article or anything to the contrary contained in subdivision five of section fourteen hundred thirty-nine-a of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a

series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-g's

*** § 1439-h. Designation of agents.** The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-nine-c of this article.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-h's

*** § 1439-i. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-i's

* **§ 1439-j. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such requirements as he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-j's

* **§ 1439-k. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-b of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred thirty-nine-b of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-b of this article, collected by the

treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-i of the town law.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-k's

* **§ 1439-l. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-c of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there

is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-l's

*** § 1439-m. Apportionment.** A local law adopted by the town of Fishkill, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-m's

*** § 1439-n. Miscellaneous.** A local law adopted by the town of Fishkill, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-n's

*** § 1439-o. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events

the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2027

* NB There are 3 § 1439-o's

* **§ 1439-p. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB There are 3 § 1439-p's

* NB Repealed December 31, 2027

* ARTICLE 31-A-3

TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF NORTHEAST

Section 1439-aa. Definitions.

1439-bb. Imposition of tax.

1439-cc. Payment of tax.

1439-dd. Liability for tax.
1439-ee. Exemptions.
1439-ff. Credit.
1439-gg. Cooperative housing corporation transfers.
1439-hh. Designation of agents.
1439-ii. Liability of recording officer.
1439-jj. Refunds.
1439-kk. Deposit and disposition of revenue.
1439-ll. Judicial review.
1439-mm. Apportionment.
1439-nn. Miscellaneous.
1439-oo. Returns to be secret.
1439-pp. Foreclosure proceedings.

* NB Repealed December 31, 2028

* **§ 1439-aa. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable,

present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Northeast. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of

the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the

internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-j of the town law.

10. "Recording officer" means the county clerk of the county of Dutchess.

11. "Town" means the town of Northeast, county of Dutchess.

12. "Treasurer" means the treasurer of the county of Dutchess.

13. "Town supervisor" means the town supervisor of the town of Northeast.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bb of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Repealed December 31, 2028

*** § 1439-bb. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Northeast, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of two percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred thirty-nine-ee of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-j of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2028

* **§ 1439-cc. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2028

* **§ 1439-dd. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed

pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2028

*** § 1439-ee. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise

than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement,

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which

is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable county, as determined by the office of real property services pursuant to section four hundred twenty-five of the real property tax law, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

* NB Repealed December 31, 2028

* **§ 1439-ff. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2028

* **§ 1439-gg. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-nine-aa of this article or anything to the contrary contained in subdivision five of section fourteen hundred thirty-nine-aa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of

shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an

information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2028

* **§ 1439-hh. Designation of agents.** The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-nine-cc of this article.

* NB Repealed December 31, 2028

* **§ 1439-ii. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed December 31, 2028

* **§ 1439-jj. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such requirements as he or she may prescribe, provided that any application for such refund is filed with the

treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2028

*** § 1439-kk. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bb of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred thirty-nine-bb of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bb of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town

supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-j of the town law.

* NB Repealed December 31, 2028

* **§ 1439-11. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-cc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the

petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2028

* **§ 1439-mm. Apportionment.** A local law adopted by the town of Northeast, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2028

* **§ 1439-nn. Miscellaneous.** A local law adopted by the town of Northeast, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2028

*** § 1439-oo. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2028

* **§ 1439-pp. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Repealed December 31, 2028

* ARTICLE 31-A-4

TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF CHESTER

Section 1439-aaa. Definitions.

1439-bbb. Imposition of tax.

1439-ccc. Payment of tax.

1439-ddd. Liability for tax.

1439-eee. Exemptions.

1439-fff. Credit.

1439-ggg. Cooperative housing corporation transfers.

1439-hhh. Designation of agents.

1439-iii. Liability of recording officer.

1439-jjj. Refunds.

1439-kkk. Deposit and disposition of revenue.

1439-lll. Judicial review.

1439-mmm. Apportionment.

1439-nnn. Miscellaneous.

1439-ooo. Returns to be secret.

1439-ppp. Foreclosure proceedings.

* NB Repealed December 31, 2045

* NB There are 2 A31-A-4's

*** § 1439-aaa. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Chester. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the

grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real

property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-1 of the town law.

10. "Recording officer" means the county clerk of the county of Orange.

11. "Town" means the town of Chester, county of Orange.

12. "Treasurer" means the treasurer of the county of Orange.

13. "Town supervisor" means the town supervisor of the town of Chester.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bbb of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-aaa's

*** § 1439-bbb. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Chester, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of three-quarters of one percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred thirty-nine-eee of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-l of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-bbb's

*** § 1439-ccc. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ccc's

*** § 1439-ddd. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These

presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ddd's

*** § 1439-eee. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a

contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement,

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption of one hundred thousand dollars shall be allowed on the consideration of the conveyance of improved real property or an interest therein, and an exemption of fifty thousand dollars shall be

allowed on the consideration of the conveyance of unimproved real property.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-eee's

* **§ 1439-fff. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-fff's

* **§ 1439-ggg. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-nine-aaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred thirty-nine-aaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and

a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and

the consideration paid for such conveyance.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-ggg's

*** § 1439-hhh. Designation of agents.** The treasurer is authorized to designate the recording officer to act as their agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as their agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-nine-ccc of this article.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-hhh's

*** § 1439-iii. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that they shall collect so long as they shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to them by the person paying the tax.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-iii's

*** § 1439-jjj. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, they may cause such moneys to be refunded pursuant to such requirements as they may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-jjj's

*** § 1439-kkk. Deposit and disposition of revenue.** 1. All taxes,

penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bbb of this article, which are collected by the treasurer or their agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as they may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred thirty-nine-bbb of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bbb of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town

shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-1 of the town law.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-kkk's

*** § 1439-lll. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-ccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously,

illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-lll's

* **§ 1439-mmm. Apportionment.** A local law adopted by the town of Chester, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-mmm's

* **§ 1439-nnn. Miscellaneous.** A local law adopted by the town of Chester, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-nnn's

*** § 1439-ooo. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ooo's

* **§ 1439-ppp. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ppp's

* ARTICLE 31-A-4

TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF ORANGETOWN

Section 1439-aaa. Definitions.

1439-bbb. Imposition of tax.

1439-ccc. Payment of tax.

1439-ddd. Liability for tax.

1439-eee. Exemptions.

1439-fff. Credit.

1439-ggg. Cooperative housing corporation transfers.

1439-hhh. Designation of agents.

1439-iii. Liability of recording officer.

1439-jjj. Refunds.

1439-kkk. Deposit and disposition of revenue.

1439-lll. Judicial review.

1439-mmm. Apportionment.

1439-nnn. Miscellaneous.

1439-ooo. Returns to be secret.

1439-ppp. Foreclosure proceedings.

* NB Repealed December 31, 2045

* NB There are 2 A31-A-4's

* **§ 1439-aaa. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Orangetown. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or

taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being

conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in

real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-1 of the town law.

10. "Recording officer" means the county clerk of the county of Rockland.

11. "Town" means the town of Orangetown, county of Rockland.

12. "Treasurer" means the treasurer of the county of Rockland.

13. "Town supervisor" means the town supervisor of the town of Orangetown.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bbb of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-aaa's

*** § 1439-bbb. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Orangetown, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of three-quarters of one percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred thirty-nine-eee of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-l of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-bbb's

*** § 1439-ccc. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ccc's

*** § 1439-ddd. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration

is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ddd's

*** § 1439-eee. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement;

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed;

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed;

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed;

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption of one hundred thousand dollars shall be allowed on the consideration of the conveyance of improved real property or an

interest therein, and an exemption of fifty thousand dollars shall be allowed on the consideration of the conveyance of unimproved real property.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-eee's

*** § 1439-fff. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-fff's

*** § 1439-ggg. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred thirty-nine-aaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred thirty-nine-aaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on

certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the

grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-ggg's

*** § 1439-hhh. Designation of agents.** The treasurer is authorized to designate the recording officer to act as the treasurer's agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which the recording officer may be designated as agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred thirty-nine-ccc of this article.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-hhh's

*** § 1439-iii. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that such recording officer shall collect so long as they shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to the recording officer by the person paying the tax.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-iii's

*** § 1439-jjj. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, the treasurer may cause such moneys to be refunded pursuant to such requirements as they may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

- * NB Repealed December 31, 2045

- * NB There are 2 § 1439-jjj's

*** § 1439-kkk. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bbb of this article, which are collected by the treasurer or the treasurer's agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as the treasurer may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred thirty-nine-bbb of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred thirty-nine-bbb of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after

the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-1 of the town law.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-kkk's

*** § 1439-lll. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-ccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-lll's

*** § 1439-mmm. Apportionment.** A local law adopted by the town of Orangetown, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-mmm's

*** § 1439-nnn. Miscellaneous.** A local law adopted by the town of Orangetown, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-nnn's

*** § 1439-ooo. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based

thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ooo's

* **§ 1439-ppp. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Repealed December 31, 2045

* NB There are 2 § 1439-ppp's

ARTICLE 31-B-1

TAX ON REAL ESTATE TRANSFERS IN THE COUNTY OF ESSEX

Section 1448-g. Definitions.

1448-h. Imposition of tax.

1448-i. Payment of tax.

1448-j. Liability for tax.

1448-k. Exemptions.

1448-l. Credit.

1448-m. Cooperative housing corporation transfers.

1448-n. Designation of agents.

1448-o. Liability of recording officer.

1448-p. Refunds.

1448-q. Deposit and disposition of revenue.

1448-r. Judicial review.

1448-s. Apportionment.

1448-t. Miscellaneous.

1448-u. Returns to be secret.

§ 1448-g. Definitions. When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Essex. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the

grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership

interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Essex.

10. "Treasurer" means the treasurer of the county of Essex.

§ 1448-h. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the county of Essex, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of one dollar for each five hundred dollars or fractional part thereof. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such legislative body, which is not less than sixty days after the enactment of such local laws, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1448-i. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or

recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred forty-eight-s of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 1448-j. Liability for tax. 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1448-k. Exemptions. 1. The following shall be exempt from payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

(j) Conveyances of an option or contract to purchase real property

with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

§ 1448-l. Credit. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1448-m. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-eight-g of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-eight-g of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates

of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the

grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1448-n. Designation of agents. The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-eight-i of this article.

§ 1448-o. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1448-p. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

§ 1448-q. Deposit and disposition of revenue. All taxes collected or received by the treasurer or his duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the legislative body of the county of Essex which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall

maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into a separate account maintained by the county of Essex and the monies therein shall be disbursed exclusively for any and all costs, expenses and debt incurred by such county for the establishment of the Essex county public safety radio communications system; and upon payment of all such costs, expenses and debt shall be deposited into the general fund of the county of Essex.

§ 1448-r. Judicial review. 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-eight-i of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application

for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 1448-s. Apportionment. The local law adopted by the legislative body of the county of Essex shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the county of Essex.

§ 1448-t. Miscellaneous. The local law adopted by the legislative body of the county of Essex may contain such other provisions as such legislative body deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1448-u. Returns to be secret. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Essex or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth

or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

§ 1448-v. Foreclosure proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a

foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

ARTICLE 31-C
**TAX ON REAL ESTATE TRANSFERS
IN THE COUNTY OF BROOME**

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§ 1449-f. Definitions. When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Broome. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental

payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine

years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Broome.

10. "Treasurer" means the commissioner of finance of the county of Broome.

§ 1449-g. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the county of Broome, acting through its local

legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of fifty cents for each five hundred dollars or fractional part thereof. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such legislative body, which is not less than sixty days after the enactment of such local laws, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1449-h. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred forty-nine-r of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or

recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 1449-i. Liability for tax. 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1449-j. Exemptions. 1. The following shall be exempt from payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

(j) Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

§ 1449-k. Credit. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the

same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1449-1. Cooperative housing corporation transfers. 1.

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-f of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-f of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation

by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirty-first and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1449-m. Designation of agents. The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-nine-h of this article.

§ 1449-n. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1449-o. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

§ 1449-p. Deposit and disposition of revenue. All taxes collected or received by the treasurer or his duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the legislative body of the county of Broome which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Broome and shall only be appropriated by the county legislature of the county of Broome to fund veterans' services programs within such county.

§ 1449-q. Judicial review. 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-h of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application

therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 1449-r. Apportionment. The local law adopted by the legislative body of the county of Broome shall provide for a method of apportionment for

determining the amount of tax due whenever the real property or interest therein is situated within and without the county of Broome.

§ 1449-s. Miscellaneous. The local law adopted by the legislative body of the county of Broome may contain such other provisions as such legislative body deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1449-t. Returns to be secret. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Broome or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

(b) The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit

in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

(c) Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

(d) Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

§ 1449-u. Foreclosure proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* ARTICLE 31-D

TAX ON REAL ESTATE TRANSFERS

IN TOWNS IN THE PECONIC BAY REGION

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* NB Repealed December 31, 2050

*** § 1449-aa. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within any town in the Peconic Bay region. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an

option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit

other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option

or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-e of the town law.

10. "Recording officer" means the county clerk of the county of Suffolk.

11. "Town" means any town in the Peconic Bay region, county of Suffolk.

12. "Treasurer" means the treasurer of the county of Suffolk.

13. "Town supervisor" means the town supervisor of a town.

14. "Peconic Bay region" means the towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold.

15. "Household income" means the total combined income of all the owners, and of any owners' spouses residing on the premises for the income tax year preceding the date of making application for the exemption.

16. "Income" means the adjusted gross income for federal income tax purposes as reported on the applicant's latest available federal or state income tax return subject to any subsequent amendments or

revisions, reduced by distributions, to the extent included in federal adjusted gross income, received from an individual retirement account and an individual retirement annuity; provided that if no such return was filed within the one year period preceding taxable status date, income shall mean the adjusted gross income that would have been so reported if such a return had been filed.

17. "Latest available return" shall mean the federal or state income tax return for the year immediately preceding the date of making application, provided however, that if the tax return for such tax year has not been filed, then the income tax return for the tax year two years preceding the date of making application shall be considered the latest available.

18. "First-time homebuyer" means a person who has not owned a primary residential property and is not married to a person who has owned a residential property during the three-year period prior to his or her purchase of the primary residential property, and who does not own a vacation or investment home.

19. "Primary residential property" means any one or two family house, townhouse or condominium located in the town which is to be owner occupied by such homebuyer.

* NB Repealed December 31, 2050

*** § 1449-bb. Imposition of tax.** 1. Notwithstanding any other provisions of law to the contrary, any town in the Peconic Bay region, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of two percent of the consideration for such conveyance. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to

section sixty-four-e of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

2. Notwithstanding any other provisions of law to the contrary, in addition to the tax authorized by subdivision one of this section, any town in the Peconic Bay region, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a supplemental tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of one half of one percent of the consideration for such conveyance. Provided, however, any such local law imposing, repealing or re-imposing such supplemental tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community housing fund pursuant to section sixty-four-k of the town law. Revenues from such supplemental tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer. Any tax imposed pursuant to this subdivision shall be administered and collected in a like manner as the tax imposed by subdivision one of this section.

* NB Repealed December 31, 2050

*** § 1449-cc. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2050

*** § 1449-dd. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the

duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2050

*** § 1449-ee. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement,

(2) covenants or restrictions prohibiting development,

(3) a purchase of development rights agreement,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) said real property is subject to the development restriction of an agricultural district or individual commitment, pursuant to article twenty-five-AA of the agriculture and markets law,

(6) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least three years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic

preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

(m) Conveyances of real property to any tax exempt corporation, incorporated pursuant to the not-for-profit corporation law or the private housing finance law, where such conveyance is for the purposes of providing affordable housing opportunities within the towns and such corporation is incorporated for the purposes of providing housing opportunities. For the purposes of this paragraph, "affordable housing" shall mean housing opportunities exclusively for town residents of the towns whose income is at or below the median income for the town.

3. (a) In the towns of East Hampton, Shelter Island and Southampton, an exemption of four hundred thousand dollars shall be allowed on the consideration of the conveyance of improved real property or an interest therein and an exemption of one hundred thousand dollars shall be allowed on the consideration of the conveyance of unimproved real property.

(b) In the towns of Riverhead and Southold, an exemption of two hundred thousand dollars shall be allowed on the consideration of the conveyance of improved real property or an interest therein and an exemption of seventy-five thousand dollars shall be allowed on the consideration of the conveyance of unimproved real property.

(c) The exemption granted pursuant to the provisions of this subdivision shall only apply to conveyances for residential property where the consideration is two million dollars or less.

4. Primary residential property purchased by one or more persons, each of whom is a first-time homebuyer shall be exempt from the payment of the real estate transfer tax, in the towns of Southampton, East Hampton, Shelter Island and Southold, provided that:

(a) (1) in the towns of Southampton, East Hampton and Shelter Island, the primary residential property is within one hundred fifty percent of the purchase price limits defined by the state of New York mortgage agency low interest rate mortgage program in the non-target one family categories for Suffolk county in effect on the contract date for the sale of such property;

(2) in the town of Southold, the primary residential property is within sixty percent of the purchase price limits defined by the state of New York mortgage agency low interest rate mortgage program in the non-target one family categories for Suffolk county in effect on the contract date for the sale of such property; and

(b) the buyer's household income does not exceed the income limits defined by the state of New York mortgage agency low interest rate mortgage program in the non-target, one and two person household category for Suffolk county in effect on the contract date for the sale of such property.

5. Such exemption shall be granted only upon application by the owner of such building on a form prescribed by the town. The application shall be filed with the town. If satisfied that the applicant is entitled to an exemption pursuant to this section, the town shall approve the application and the conveyance of such primary residential property shall be exempt from the real estate transfer tax imposed by this article.

* NB Repealed December 31, 2050

* **§ 1449-ff. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2050

* **§ 1449-gg. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a

series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2050

* **§ 1449-hh. Designation of agents.** The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-nine-cc of this article.

* NB Repealed December 31, 2050

* **§ 1449-ii. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed December 31, 2050

* **§ 1449-jj. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such rules and regulations he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2050

* **§ 1449-kk. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred forty-nine-bb of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred forty-nine-bb of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred forty-nine-bb of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in

such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to such town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-e of the town law.

* NB Repealed December 31, 2050

* **§ 1449-11. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-cc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if

such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2050

* **§ 1449-mm. Apportionment.** A local law adopted by any town in the Peconic Bay region, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2050

* **§ 1449-nn. Miscellaneous.** 1. A local law adopted by any town in the Peconic Bay region, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration and enforcement of the tax imposed pursuant to this article, including but

not limited to provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments, proceedings to recover the tax, and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

2. Notwithstanding any provision of law to the contrary, the commissioner may permit the supervisor of the town, or authorized representative of said supervisor to inspect any return filed under this chapter, or may furnish to such supervisor or his or her representative an abstract of any such return, or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished only if such information is to be used for tax purposes.

3. Notwithstanding any provision of law to the contrary, the supervisor of the towns or the authorized representative of such supervisor may permit the commissioner to inspect any return filed under this chapter, or may furnish to the commissioner or supervisor an abstract of any such return, or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article, but such permission shall only be granted or such information furnished only if such information is to be used for tax purposes.

4. The commissioner and the towns imposing the tax authorized by this article may enter into a cooperative agreement to facilitate the administration and enforcement of this article.

* NB Repealed December 31, 2050

* **§ 1449-oo. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town,

including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2050

* **§ 1449-pp. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Repealed December 31, 2050

ARTICLE 31-E
**TAX ON REAL ESTATE TRANSFERS
IN THE COUNTY OF NASSAU**

Section 1449-aaa. Definitions.

1449-bbb. Imposition of tax.

1449-ccc. Payment of tax.

1449-ddd. Liability for tax.

1449-eee. Exemptions.

1449-fff. Credit.

1449-ggg. Cooperative housing corporation transfers.

1449-hhh. Designation of agents.

1449-iii. Liability of recording officer.

1449-jjj. Refunds.

1449-kkk. Deposit and disposition of revenue.

1449-lll. Judicial review.

1449-mmm. Apportionment.

1449-nnn. Miscellaneous.

1449-ooo. Returns to be secret.

1449-ppp. Foreclosure proceedings.

§ 1449-aaa. Definitions. When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee,

referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Nassau. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest,

consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain,

conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Nassau.

10. "Treasurer" means the treasurer of the county of Nassau.

§ 1449-bbb. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the county of Nassau, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of five dollars for each five hundred dollars or fractional part thereof. The authority of the county to adopt and amend local laws imposing the tax authorized by this section and the imposition of all taxes pursuant thereto shall expire on January thirty-first, two thousand one. Such local law may apply to any conveyance occurring on or after the date designated by such legislative body, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1449-ccc. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section

fourteen hundred forty-nine-~~mm~~ of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 1449-ddd. Liability for tax. 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1449-eee. Exemptions. 1. The following shall be exempt from payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act; and

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property.

§ 1449-fff. Credit. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract

by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1449-ggg. Cooperative housing corporation transfers. 1.

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the

numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirty-first and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1449-hhh. Designation of agents. The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-nine-ccc of this article.

§ 1449-iii. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and

collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1449-jjj. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made. When making any findings or determinations the treasurer may rely upon any findings or determinations of the commissioner and any rules and regulations promulgated pursuant to article thirty-one of this chapter.

§ 1449-kkk. Deposit and disposition of revenue. All taxes collected or received by the treasurer or his duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the legislative body of the county of Nassau which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Nassau and shall only be appropriated by the county legislature of the county of Nassau for the payment of debt service.

§ 1449-lll. Judicial review. 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-ccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application

therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

3. In any proceedings instituted pursuant to this article the rules and regulations of the commissioner shall be applied where applicable.

§ 1449-mmm. Apportionment. The local law adopted by the legislative body of the county of Nassau shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the county of Nassau.

§ 1449-nnn. Miscellaneous. The local law adopted by the legislative body of the county of Nassau may contain such other provisions as such legislative body deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1449-ooo. Returns to be secret. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Nassau or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on

behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

§ 1449-ppp. Foreclosure proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* ARTICLE 31-F

**TAX ON REAL ESTATE TRANSFERS
IN THE TOWN OF WARWICK**

Section 1449-aaaa. Definitions.

1449-bbbb. Imposition of tax.

1449-cccc. Payment of tax.

1449-dddd. Liability for tax.

1449-eeee. Exemptions.

1449-ffff. Credit.

1449-gggg. Cooperative housing corporation transfers.

1449-hhhh. Designation of agents.

1449-iiii. Liability of recording officer.

1449-jjjj. Refunds.

1449-kkkk. Deposit and disposition of revenue.

1449-llll. Judicial review.

1449-mmmm. Apportionment.

1449-nnnn. Miscellaneous.

1449-oooo. Returns to be secret.

1449-pppp. Foreclosure proceedings.

* NB Repealed December 31, 2050

*** § 1449-aaaa. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or

hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Warwick. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-g of the town law.

10. "Recording officer" means the county clerk of the county of Orange.

11. "Town" means the town of Warwick, county of Orange.

12. "Treasurer" means the treasurer of the county of Orange.

13. "Town supervisor" means the town supervisor of the town of Warwick.

* NB Repealed December 31, 2050

* **§ 1449-bbbb. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Warwick, acting through its town board, is hereby authorized and empowered to adopt a local law imposing

in such town a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of three-quarters of one percent of the consideration for such conveyance. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-g of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2050

*** § 1449-cccc. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the

real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2050

* **§ 1449-dddd. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2050

* **§ 1449-eeee. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:

- (1) agricultural, conservation, scenic, or an open space easement,
- (2) covenants or restrictions prohibiting development,
- (3) a purchase of development rights agreement,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(5) said real property is subject to the development restriction of an agricultural district or individual commitment, pursuant to article twenty-five-AA of the agriculture and markets law,

(6) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least three years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption of one hundred thousand dollars shall be allowed on the consideration of the conveyance of improved real property or an interest therein, and an exemption of fifty thousand dollars shall be allowed on the consideration of the conveyance of unimproved real property.

* NB Repealed December 31, 2050

* **§ 1449-ffff. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee.

Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2050

*** § 1449-gggg. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent

to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2050

* **§ 1449-hhhh. Designation of agents.** The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-nine-cccc of this article.

* NB Repealed December 31, 2050

* **§ 1449-iiii. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed December 31, 2050

* **§ 1449-jjjj. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such rules and regulations he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2050

* **§ 1449-kkkk. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred forty-nine-bbbb of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred forty-nine-bbbb of this

article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred forty-nine-bbbb of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-g of the town law.

* NB Repealed December 31, 2050

* **§ 1449-llll. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-cccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under

article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2050

* **§ 1449-mmmm. Apportionment.** A local law adopted by the town of Warwick, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2050

* **§ 1449-nnnn. Miscellaneous.** A local law adopted by the town of Warwick, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2050

* **§ 1449-oooo. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such

county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2050

* **§ 1449-pppp. Foreclosure proceedings.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Repealed December 31, 2050

ARTICLE 31-G
**TAX ON REAL ESTATE TRANSFERS
IN THE COUNTY OF TOMPKINS**

Section 1449-aaaaa. Definitions.

1449-bbbbbb. Imposition of tax.

1449-cccccc. Payment of tax.

1449-dddddd. Liability for tax.

1449-eeeeee. Exemptions.

1449-ffffff. Credit.

1449-gggggg. Cooperative housing corporation transfers.

1449-hhhhhh. Designation of agents.

1449-iiiii. Liability of recording officer.

1449-jjjjjj. Refunds.

1449-kkkkkk. Deposit and disposition of revenue.

1449-llllll. Judicial review.

1449-mmmmm. Apportionment.

1449-nnnnnn. Miscellaneous.

1449-oooooo. Returns to be secret.

1449-pppppp. Foreclosure proceedings.

§ 1449-aaaaa. Definitions. When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Tompkins. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease

or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the

internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Tompkins.

10. "Treasurer" means the commissioner of finance of the county of Tompkins.

§ 1449-bbbbb. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the county of Tompkins, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of one dollar for each five hundred dollars or fractional part thereof. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such legislative body, which is not less than sixty days after the enactment of such local laws, but shall not apply to conveyances made on or after

such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1449-cccc. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred forty-nine-mmmmm of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 1449-ddddd. Liability for tax. 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1449-eeeeee. Exemptions. 1. The following shall be exempt from payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

(j) Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

§ 1449-fffff. Credit. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is

the total value of the consideration used to compute such tax paid.

§ 1449-ggggg. Cooperative housing corporation transfers. 1.

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaaaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaaaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the

corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1449-hhhhh. Designation of agents. The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-nine-cccc of this article.

§ 1449-iiiiii. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1449-jjjjj. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

§ 1449-kkkkk. Deposit and disposition of revenue. All taxes collected or received by the treasurer or his duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the legislative body of the county of Tompkins which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Tompkins.

§ 1449-lllll. Judicial review. 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-cccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the

superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 1449-mmmmm. Apportionment. The local law adopted by the legislative body of the county of Tompkins shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the county of Tompkins.

§ 1449-nnnnn. Miscellaneous. The local law adopted by the legislative body of the county of Tompkins may contain such other provisions as such

legislative body deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1449-00000. Returns to be secret. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Tompkins or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly

authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

§ 1449-ppppp. Foreclosure proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

ARTICLE 31-H

TAX ON REAL ESTATE TRANSFERS IN THE COUNTY OF MADISON

Section 1449-aaaaaa. Definitions.

1449-bbbbbb. Imposition of tax.

1449-cccccc. Payment of tax.

1449-dddddd. Liability for tax.

1449-eeeeee. Exemptions.

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1449-iiiii. Liability of recording officer.

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1449-kkkkkk. Deposit and disposition of revenue.

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1449-nnnnnn. Miscellaneous.

1449-000000. Returns to be secret.

1449-pppppp. Foreclosure.

§ 1449-aaaaaa. Definitions. When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Madison. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or

taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being

conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real

property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Madison.

10. "Treasurer" means the chief fiscal officer of the county of Madison.

§ 1449-bbbbbbb. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the county of Madison, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of two dollars for each five hundred dollars or fractional part thereof. Such local law may apply to any conveyance occurring on or after the date designated by such legislative body, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1449-cccccc. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or

recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred forty-nine-mmmmmm of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 1449-ddddddd. Liability for tax. 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1449-eeeeee. Exemptions. 1. The following shall be exempt from payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from the liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

(j) Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his or her personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

§ 1449-ffffff. Credit. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1449-gggggg. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaaaaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaaaaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for

the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee

identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1449-hhhhhh. Designation of agents. The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-nine-cccccc of this article.

§ 1449-iiiiii. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1449-jjjjjj. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made. When making any findings or determinations the treasurer may rely upon any findings or determinations of the commissioner and any rules and regulations promulgated pursuant to article thirty-one of this chapter.

§ 1449-kkkkkk. Deposit and disposition of revenue. All taxes collected or received by the treasurer or his or her duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the

legislative body of the county of Madison which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Madison and shall be used for purposes deemed appropriate by the legislative body of the county of Madison.

§ 1449-llllll. Judicial review. 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-cccccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

3. In any proceedings instituted pursuant to this article the rules and regulations of the commissioner shall be applied where applicable.

§ 1449-mmmmmm. Apportionment. The local law adopted by the legislative body of the county of Madison shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the county of Madison.

§ 1449-nnnnnn. Miscellaneous. The local law adopted by the legislative body of the county of Madison may contain such other provisions as such legislative body deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1449-000000. Returns to be secret. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Madison or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be

incapable of holding any public office in this state for a period of five years thereafter.

§ 1449-pppppp. Foreclosure. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* ARTICLE 31-I

**TAX ON REAL ESTATE TRANSFERS
IN THE COUNTY OF CORTLAND**

Section 1449-aaaaaaa. Definitions.
1449-bbbbbbbb. Imposition of tax.
1449-ccccccc. Payment of tax.
1449-dddddddd. Liability for tax.
1449-eeeeeee. Exemptions.
1449-ffffffff. Credit.
1449-gggggggg. Cooperative housing corporation transfers.
1449-hhhhhhhh. Designation of agents.
1449-iiiiiii. Liability of recording officer.
1449-jjjjjjjj. Refunds.
1449-kkkkkkkk. Deposit and disposition of revenue.
1449-llllllll. Judicial review.
1449-mmmmmmm. Apportionment.
1449-nnnnnnnn. Miscellaneous.
1449-oooooooo. Returns to be secret.
1449-pppppppp. Foreclosure.

* NB Repealed October 25, 2030

* **§ 1449-aaaaaaa. Definitions.** When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Cortland. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the

exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale,

exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of

Cortland.

10. "Treasurer" means the chief fiscal officer of the county of Cortland.

* NB Repealed October 25, 2030

*** § 1449-bbbbbbb. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the county of Cortland, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of one dollar for each five hundred dollars or fractional part thereof. Such local law may apply to any conveyance occurring on or after the date designated by such legislative body, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed October 25, 2030

*** § 1449-ccccccc. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article

thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred forty-nine-mmmmmmm of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

* NB Repealed October 25, 2030

* **§ 1449-ddddddd. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this article or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed October 25, 2030

*** § 1449-eeeeeee. Exemptions.** 1. The following shall be exempt from payment of the real estate transfer tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

(j) Conveyances of an option or contract to purchase real property

with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

* NB Repealed October 25, 2030

* **§ 1449-ffffff. Credit.** A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed October 25, 2030

* **§ 1449-gggggggg. Cooperative housing corporation transfers. 1.** Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaaaaaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaaaaaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where

the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirty-first and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary,

including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed October 25, 2030

*** § 1449-hhhhhh. Designation of agents.** The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred forty-nine-cccccc of this article.

* NB Repealed October 25, 2030

*** § 1449-iiiii. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

* NB Repealed October 25, 2030

*** § 1449-jjjjjjj. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made. When making any findings or determinations the treasurer may rely upon any findings or determinations of the commissioner and any rules and regulations promulgated pursuant to article thirty-one of this chapter.

* NB Repealed October 25, 2030

*** § 1449-kkkkkkk. Deposit and disposition of revenue.** All taxes collected or received by the treasurer or his duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the legislative body of the county of Cortland which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Cortland and shall be used for purposes deemed appropriate by the legislative body of the county of Cortland.

* NB Repealed October 25, 2030

*** § 1449-lllllll. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-ccccccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the

taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

3. In any proceedings instituted pursuant to this article the rules and regulations of the commissioner shall be applied where applicable.

* NB Repealed October 25, 2030

* **§ 1449-mmmmmmm. Apportionment.** The local law adopted by the legislative body of the county of Cortland shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the county of Cortland.

* NB Repealed October 25, 2030

* **§ 1449-nnnnnnn. Miscellaneous.** The local law adopted by the legislative body of the county of Cortland may contain such other provisions as such legislative body deems necessary for the proper

administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed October 25, 2030

*** § 1449-oooooooo. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Cortland or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly

authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed October 25, 2030

* **§ 1449-ppppppp. Foreclosure.** Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Repealed October 25, 2030

* ARTICLE 31-J

**TAX ON REAL ESTATE TRANSFERS
IN THE TOWN OF COPEN**

Section 1450-a. Definitions.

1450-b. Imposition of tax.

1450-c. Payment of tax.

1450-d. Liability for tax.

1450-e. Exemptions.

1450-f. Credit.

1450-g. Cooperative housing corporation transfers.

1450-h. Designation of agents.

1450-i. Liability of recording officer.

1450-j. Refunds.

1450-k. Deposit and disposition of revenue.

1450-l. Judicial review.
1450-m. Apportionment.
1450-n. Miscellaneous.
1450-o. Returns to be secret.
1450-p. Foreclosure proceedings.

* NB Repealed December 31, 2045

* **§ 1450-a. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Copake. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed

in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a

proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of

first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-1 of the town law.

10. "Recording officer" means the county clerk of the county of Columbia.

11. "Town" means the town of Copake, county of Columbia.

12. "Treasurer" means the treasurer of the county of Columbia.

13. "Town supervisor" means the town supervisor of the town of Copake.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred fifty-b of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on

vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Repealed December 31, 2045

*** § 1450-b. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Copake, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of two percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred fifty-e of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-l of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Repealed December 31, 2045

*** § 1450-c. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall

endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Repealed December 31, 2045

*** § 1450-d. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes

property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Repealed December 31, 2045

* **§ 1450-e. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement;

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed;

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed;

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed;

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable county, as determined

by the office of real property services pursuant to section four hundred twenty-five of the real property tax law, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

* NB Repealed December 31, 2045

* **§ 1450-f. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Repealed December 31, 2045

* **§ 1450-g. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred fifty-a of this article or anything to the contrary contained in subdivision five of section fourteen hundred fifty-a of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a

corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Repealed December 31, 2045

* **§ 1450-h. Designation of agents.** The treasurer is authorized to designate the recording officer to act as their agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as their agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred fifty-c of this article.

* NB Repealed December 31, 2045

* **§ 1450-i. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that they shall collect so long as they shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to them by the person paying the tax.

* NB Repealed December 31, 2045

* **§ 1450-j. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, they may cause such moneys to be refunded pursuant to such requirements as they may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Repealed December 31, 2045

* **§ 1450-k. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred fifty-b of this article, which are collected by the treasurer or their agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall

be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as they may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred fifty-b of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred fifty-b of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-1 of the town law.

* NB Repealed December 31, 2045

* **§ 1450-1. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred fifty-c of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of insurance as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is

instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Repealed December 31, 2045

* **§ 1450-m. Apportionment.** A local law adopted by the town of Copake, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Repealed December 31, 2045

* **§ 1450-n. Miscellaneous.** A local law adopted by the town of Copake, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Repealed December 31, 2045

* **§ 1450-o. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit

the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Repealed December 31, 2045

* **§ 1450-p. Foreclosure proceedings.** Where the conveyance consists of transfer of property made as a result of an order of the court in a

foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Repealed December 31, 2045

* ARTICLE 31-K

TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF CLARKSTOWN

Section 1450-aa. Definitions.

1450-bb. Imposition of tax.

1450-cc. Payment of tax.

1450-dd. Liability for tax.

1450-ee. Exemptions.

1450-ff. Credit.

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1450-hh. Designation of agents.

1450-ii. Liability of recording officer.

1450-jj. Refunds.

1450-kk. Deposit and disposition of revenue.

1450-ll. Judicial review.

1450-mm. Apportionment.

1450-nn. Miscellaneous.

1450-oo. Returns to be secret.

1450-pp. Foreclosure proceedings.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

* **§ 1450-aa. Definitions.** When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or

otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means: (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation; and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Clarkstown. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the

real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real

property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-m of the town law.

10. "Recording officer" means the county clerk of the county of

Rockland.

11. "Town" means the town of Clarkstown, county of Rockland.

12. "Treasurer" means the treasurer of the county of Rockland.

13. "Town supervisor" means the town supervisor of the town of Clarkstown.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred fifty-bb of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

15. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report indicates that the property is a one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-bb. Imposition of tax.** Notwithstanding any other provisions of law to the contrary, the town of Clarkstown, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein not to exceed a maximum of three-quarters of one percent of the consideration for such conveyance, subject to the exemptions set forth in section fourteen hundred fifty-ee of this article; any such local law shall fix the rate of such tax. Provided, however, any such local law

imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-m of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-cc. Payment of tax.** 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of return, the information which it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are

inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-dd. Liability for tax.** 1. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay the tax, such tax shall be the joint and several liability of the grantee and the grantor.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are subject to the tax. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-ee. Exemptions.** 1. The following shall be exempt from the payment of the real estate transfer tax imposed by this article:

(a) The state of New York, or any of its agencies, instrumentalities,

political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or an open space easement;

(2) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed;

(3) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed;

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed;

(5) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph two of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable county, as determined by the office of real property services pursuant to section four hundred twenty-five of the real property tax law, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

* **§ 1450-ff. Credit.** A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee on a prior creation of a leasehold of all or a portion of

the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-gg. Cooperative housing corporation transfers. 1.**

Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred fifty-aa of this article or anything to the contrary contained in subdivision five of section fourteen hundred fifty-aa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property.

The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

* **§ 1450-hh. Designation of agents.** The treasurer is authorized to designate the recording officer to act as their agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as their agent subject to such terms and conditions as the treasurer shall

prescribe. The real estate transfer tax shall be paid to such agent as provided in section fourteen hundred fifty-cc of this article.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

* **§ 1450-ii. Liability of recording officer.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that they shall collect so long as they shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to them by the person paying the tax.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

* **§ 1450-jj. Refunds.** Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, they may cause such moneys to be refunded pursuant to such requirements as they may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

* **§ 1450-kk. Deposit and disposition of revenue.** 1. All taxes, penalties and interest imposed by the town under the authority of section fourteen hundred fifty-bb of this article, which are collected by the treasurer or their agents, shall be deposited in a single trust fund for the town and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of

such fund.

2. The treasurer shall retain such amount as they may determine to be necessary for refunds with respect to the tax imposed by the town, under the authority of section fourteen hundred fifty-bb of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the town supervisor the taxes, penalties and interest imposed by the town under the authority of section fourteen hundred fifty-bb of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the town supervisor by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the town supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to the town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and town supervisor shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the town, pursuant to section sixty-four-m of the town law.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-11. Judicial review.** 1. Any final determination of the amount of any tax payable under section fourteen hundred fifty-cc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of insurance as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the

supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-mm. Apportionment.** A local law adopted by the town of Clarkstown, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the town.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-nn. Miscellaneous.** A local law adopted by the town of Clarkstown, pursuant to this article, may contain such other provisions as the town deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

*** § 1450-oo. Returns to be secret.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or town, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting

a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or town in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or town is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county or town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

4. Any officer or employee of such county or town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

* **§ 1450-pp. Foreclosure proceedings.** Where the conveyance consists of transfer of property made as a result of an order of the court in a

foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

* NB Effective August 30, 2026

* NB Repealed December 31, 2046

ARTICLE 33

FRANCHISE TAXES ON INSURANCE CORPORATIONS

Section 1500. General definitions.

1501. Imposition of tax.

1502. Computation of tax.

1502-a. Tax on non-life insurance corporations.

1502-b. Computation of tax for captive insurance companies.

1503. Computation of entire net income.

1504. Allocation.

1505. Limitation on tax.

1505-a. Metropolitan transportation business tax surcharge on insurance corporations.

1510. Additional franchise tax on insurance corporations.

1511. Credits.

1512. Exemptions.

1513. Declarations of estimated tax.

1514. Payments of estimated tax.

1515. Returns.

1516. Payment of tax.

1517. Deposit and disposition of revenue.

1518. Secrecy required of officials; penalty for violation.

1519. Procedural provisions.

1520. Tax surcharge.

Section 1500. General definitions. The following words, as used in this article, shall have the meanings hereinafter set forth.

(a) The term "insurance corporation" includes a corporation, association, joint stock company or association, person, society,

aggregation or partnership, by whatever name known, doing an insurance business, and, notwithstanding the provisions of section fifteen hundred twelve of this article, shall include (1) a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, (2) the state insurance fund and (3) a corporation, association, joint stock company or association, person, society, aggregation or partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law. The definition of the "state insurance fund" contained in this subdivision shall be limited in its effect to the provisions of this article and the related provisions of this chapter and shall have no force and effect other than with respect to such provisions. The term "insurance corporation" shall also include a captive insurance company doing a captive insurance business, as defined in subsections (c) and (b), respectively, of section seven thousand two of the insurance law; provided, however, "insurance corporation" shall not include the metropolitan transportation authority, the power authority of New York or any statutory subsidiary thereof, the New York convention center operating corporation or any statutory subsidiary thereof, or a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments, whether state or local; and provided further "insurance corporation" does not include any combinable captive insurance company. The term "insurance corporation" shall also include an unauthorized insurer operating from an office within the state, pursuant to paragraph five of subsection (b) of section one thousand one hundred one and subsection (i) of section two thousand one hundred seventeen of the insurance law. The term "insurance corporation" also includes a health maintenance organization required to obtain a certificate of authority under article forty-four of the public health law.

(b) The term "domestic insurance corporation" means an insurance corporation incorporated or organized under the laws of this state. Provided, however, the savings banks life insurance fund and savings and insurance banks which are authorized to transact the business authorized by the provisions of article six-a of the banking law shall be subject

to taxation as domestic insurance corporations on such insurance business under this article.

(c) The term "foreign insurance corporation" means an insurance corporation incorporated or organized under the laws of any other state of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(d) The term "alien insurance corporation" means an insurance corporation incorporated or organized under the laws of any other foreign nation, or of any province or territory not included under the definition of "foreign insurance corporation."

(e) The term "taxpayer" means any insurance corporation subject to the tax imposed under section fifteen hundred one, fifteen hundred two-a, or fifteen hundred ten or any captive insurance company subject to the tax imposed under section fifteen hundred two-b of this article.

(f) The term "taxable year" means the taxpayer's taxable year for federal income tax purposes, or the part thereof during which the taxpayer is subject to the tax under this article.

(g) The term "subsidiary" means a corporation of which over fifty percent of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer.

(h) The term "subsidiary capital" means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by a written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under any article of this chapter, provided, however, that in the discretion of the tax commission, there shall be deducted from subsidiary capital any liabilities payable by their terms on demand within one year from the date incurred, other than loans or advances outstanding for more than one year as of any date during the taxable year covered by the return, which are attributable to subsidiary capital.

(i) The term "investment capital" means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business, exclusive of subsidiary

capital and stock issued by the taxpayer, provided, however, that in the discretion of the tax commission, there shall be deducted from investment capital any liabilities payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the return, which are attributable to investment capital, provided, also, there shall be excluded from investment capital, such investments which are held to maintain reserves of the taxpayer required under sections one thousand three hundred three, one thousand three hundred four and one thousand three hundred five of the insurance law.

(j) The term "business capital" means all assets, other than subsidiary capital, investment capital and stock issued by the taxpayer, less liabilities not deducted from subsidiary or investment capital which are payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the return, except that cash on hand and on deposit shall be treated as investment or as business capital as the taxpayer may elect, provided, however, that there shall be excluded from business capital such assets which are held to maintain reserves of the taxpayer required under sections one thousand three hundred three, one thousand three hundred four and one thousand three hundred five of the insurance law.

(k) The term "special risk premium" means any premium received on insurance provided the insurance is exempt from the filing requirements with respect to rates and policy forms pursuant to article sixty-three of the insurance law.

§ 1501. Imposition of tax. (a) Every domestic insurance corporation and every foreign or alien insurance corporation, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, for all or any part of its taxable year, except corporations specified in subdivision (a) of section fifteen hundred twelve, shall annually pay a franchise tax which shall be computed as provided in section fifteen hundred two.

(b) Every life insurance corporation which shall obtain a certificate of authority to transact business in this state or a renewal of such certificate from the superintendent of financial services shall, upon the expiration of such certificate for any cause or upon its ceasing to transact new business in this state, continue to pay a tax upon its business remaining in force in this state as provided in section fifteen hundred two.

§ 1502. Computation of tax. (a) The tax imposed under section fifteen hundred one shall be the greatest of:

(1) for taxable years beginning before July first, two thousand, nine percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof, except that for taxable years beginning prior to January first, nineteen hundred seventy-eight, the rate shall be four and five-tenths percent; for taxable years beginning after June thirtieth, two thousand and before July first, two thousand one, eight and one-half percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; for taxable years beginning after June thirtieth, two thousand one and before July first, two thousand two, eight percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; for taxable years beginning after June thirtieth, two thousand two and before January first, two thousand seven, seven and one-half percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; and for taxable years beginning on or after January first, two thousand seven, seven and one-tenth percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; or

(2) one and six-tenths mills for each dollar of the taxpayer's total business and investment capital allocated within this state for the taxable year, or part thereof, except that for taxable years beginning prior to January first, nineteen hundred seventy-eight, the rate shall be eight-tenths mills; or

(3) nine percent on thirty percent of the taxpayer's entire net income

plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five percent of its issued capital stock minus fifteen thousand dollars and any net loss for the reported year, or the portion of such sum allocated within the state as hereinafter provided, except that for taxable years beginning prior to January first, nineteen hundred seventy-eight, the rate shall be four and five-tenths percent rather than nine percent; or

(4) two hundred fifty dollars; plus

(b) eight-tenths of a mill for each dollar of the portion of the taxpayer's subsidiary capital allocated within the state for the taxable year, or part thereof, except that for taxable years beginning prior to January first, nineteen hundred seventy-eight, the rate shall be four-tenths of a mill.

§ 1502-a. Tax on non-life insurance corporations. In lieu of the tax imposed by section fifteen hundred one of this article, every domestic insurance corporation, every foreign insurance corporation and every alien insurance corporation, other than such corporations transacting the business of life insurance, (1) authorized to transact business in this state under a certificate of authority from the superintendent of financial services, (2) that is a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, or (3) that is a health maintenance organization required to obtain a certificate of authority under article forty-four of the public health law, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums thereon, written on risks located or resident in this state. The tax imposed by this section shall be computed in the manner set forth in subdivision (a) of section fifteen hundred ten of this article as such subdivision applied to taxable years beginning before January first, two thousand three, except that the rate of tax imposed by this section shall be one and seventy-five hundredths percent on all gross direct premiums, less return premiums thereon, for accident and health insurance contracts, including contracts with health maintenance

organizations for health services, and two percent on all other such premiums. All the other provisions in section fifteen hundred ten of this article as amended from time to time, other than subdivision (b) of such section, shall apply to the tax imposed by this section. In no event shall the tax imposed under this section be less than two hundred fifty dollars.

§ 1502-b. Computation of tax for captive insurance companies. (a) In lieu of the taxes and tax surcharge imposed by sections fifteen hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen hundred ten of this article, every captive insurance company licensed by the superintendent of financial services pursuant to the provisions of article seventy of the insurance law, other than the metropolitan transportation authority, the power authority of New York or any statutory subsidiary thereof, the New York convention center operating corporation or any statutory subsidiary thereof, and a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments whether state or local, and other than combinable captive insurance company, shall, for the privilege of exercising its corporate franchise, pay a tax on (1) all gross direct premiums, less return premiums thereon, written on risks located or resident in this state and (2) all assumed reinsurance premiums, less return premiums thereon, written on risks located or resident in this state. The rate of the tax imposed on gross direct premiums shall be four-tenths of one percent on all or any part of the first twenty million dollars of premiums, three-tenths of one percent on all or any part of the second twenty million dollars of premiums, two-tenths of one percent on all or any part of the third twenty million dollars of premiums, and seventy-five thousandths of one percent on each dollar of premiums thereafter. The rate of the tax on assumed reinsurance premiums shall be two hundred twenty-five thousandths of one percent on all or any part of the first twenty million dollars of premiums, one hundred and fifty thousandths of one percent on all or any part of the second twenty million dollars of premiums, fifty thousandths

of one percent on all or any part of the third twenty million dollars of premiums and twenty-five thousandths of one percent on each dollar of premiums thereafter. The tax imposed by this section shall be equal to the greater of (i) the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums or (ii) five thousand dollars.

(b) In determining the amount of gross direct premiums or assumed reinsurance premiums taxable in this state, all premiums written, procured or received in this state shall be deemed written on property or risks located or resident in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums or which have been used as a measure of a tax of any other state or states.

(c) The definition of the term "premium" set forth in subdivision (c) of section fifteen hundred ten of this article shall apply to this section. In addition, "gross direct premium" shall be determined as provided in such subdivision (c). Provided, however, that the term "premium" shall also include any amount received by a captive insurance company as consideration for insurance provided, in the case of a pure captive insurance company, to its parents and affiliated companies, and, in the case of a group captive insurance company, to the industrial insureds that comprise the industrial insured group. The terms "pure captive insurance company", "group captive insurance company", "industrial insureds" and "industrial insured group" shall have the same meanings as such terms have in section seven thousand two of the insurance law. The reporting of premiums for the purpose of the tax imposed by this section shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement filed with the superintendent of financial services pursuant to section seven thousand six of the insurance law.

(d) The superintendent of financial services shall have the same power, duty and responsibility to examine the returns of captive insurance companies as such superintendent has with respect to insurance corporations as set forth in subdivision (e) of section fifteen hundred ten of this article.

(e) The credits set forth in section fifteen hundred eleven of this article shall not be allowed against the tax imposed by this section.

§ 1503. Computation of entire net income. (a) The entire net income of a taxpayer shall be its total net income from all sources which shall be presumably the same as the life insurance company taxable income (which shall include, in the case of a stock life insurance company that has a balance, as determined as of the close of such company's last taxable year beginning before January first, two thousand eighteen, in an existing policyholders surplus account, as such term is defined in section 815 of the internal revenue code as such section was in effect for taxable years beginning before January first, two thousand eighteen, the amount of one-eighth of such balance), taxable income of a partnership or taxable income, but not alternative minimum taxable income, as the case may be, which the taxpayer is required to report to the United States treasury department, for the taxable year or, in the case of a corporation exempt from federal income tax (other than the tax on unrelated business taxable income imposed under section 511 of the internal revenue code) but not exempt from tax under section fifteen hundred one, the taxable income which such taxpayer would have been required to report but for such exemption, except as hereinafter provided.

(b) Modifications. In computing entire net income, the following modifications shall be made:

(1) Entire net income shall not include:

(A) income, gains and losses from subsidiary capital which do not include the amount of a recovery in respect of any war loss, except that this modification shall not apply to the amount described in subparagraph (S) of this paragraph;

(B) fifty percent of dividends other than from subsidiaries, except that this modification shall not apply to the amount described in subparagraph (S) of this paragraph, and except that, in the case of a life insurance company, such modification shall apply only with respect to the company's share of such dividends, which share means the percentage determined under paragraph one of subsection (a) of section eight hundred twelve of the internal revenue code;

(C) any refund or credit of a tax imposed under this article or section one hundred eighty-seven, or article twenty-three of this chapter heretofore in effect to the extent properly included as income

for federal income tax purposes, for which no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article for any prior year;

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

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

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

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

(H) the amount deductible pursuant to paragraph ten of this subdivision;

(I) upon the disposition of property to which paragraph ten of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in subparagraph (M) of paragraph two of this subdivision attributable to such property exceeds the aggregate of the

amounts described in paragraph ten of this subdivision attributable to such property;

(J) the amount of unearned premiums on outstanding business at the end of the taxable year included in premiums earned pursuant to the provisions of section 832(b)(4)(B) of the internal revenue code;

(K) the amount of unearned premiums on outstanding business at the end of the taxable year included in premiums earned pursuant to the provisions of section 832(b)(7)(B)(i) of the internal revenue code;

(L) the amount included in premiums earned pursuant to the provisions of section 832(b)(8)(A)(i) of the internal revenue code which is the difference between the amount of discounted unearned premiums on outstanding business at the end of the taxable year and the amount of unearned premiums on outstanding business at the end of the taxable year;

(M) for taxable years beginning after December thirty-first, nineteen hundred eighty-six and before January first, nineteen hundred ninety-two, the amount of unearned premiums on outstanding business included in premiums earned pursuant to the provisions of sections 832(b)(4)(C) and 832(b)(7)(B)(ii) of the internal revenue code;

(N) the amount which is the difference between the amount of discounted unpaid losses at the end of the taxable year used in the computation of losses incurred pursuant to section 832(b)(5)(A) of the internal revenue code, and the amount of unpaid losses that would be used in such computation for the taxable year if such losses were not discounted pursuant to the provisions of section 846(a) of the internal revenue code;

(O) the amount by which losses incurred as defined in section 832(b)(5)(A) of the internal revenue code are reduced in accordance with section 832(b)(5)(B) of such code; and

(P) the amount included in federal gross income pursuant to sections 847(5) and 847(6) of the internal revenue code.

(Q) The amount deductible pursuant to paragraph twelve of this subsection.

(R) for taxable years beginning after December thirty-first, two thousand two, the amount deductible pursuant to paragraph fourteen of this subdivision.

(S) The income required to be included in the taxpayer's federal gross

income pursuant to subsection (a) of section 951 of the internal revenue code by reason of subsection (a) of section 965 of such code as adjusted by subsection (b) of such section but without regard to subsection (c) of such section to the extent such income is received from a corporation that is not included in a combined return with the taxpayer.

(T) Any amount excepted, for purposes of subsection (a) of section one hundred eighteen of the internal revenue code, from the term "contribution to the capital of the taxpayer" by paragraph two of subsection (b) of section one hundred eighteen of the internal revenue code.

(U) To the extent not excluded from income pursuant to subparagraph (A) of this paragraph, ninety-five percent of the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of the internal revenue code, without regard to the deduction under section 250 of the internal revenue code, that is generated by a corporation that is not included in a combined report with the taxpayer.

(V) To the extent not excluded from income pursuant to subparagraph (A) or (B) of this paragraph, any amount treated as a dividend received by the taxpayer under section 78 of the internal revenue code that is attributable to the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of such code.

(W) The amount of any gain added back to determine entire net income in a previous taxable year pursuant to subparagraph (Z) of paragraph two of this subdivision that is included in federal gross income for the taxable year.

(X) For taxable years beginning on or after January first, two thousand twenty-five, in the case of qualified production property described in paragraph two of subsection (n) of section one hundred sixty-eight of the internal revenue code, the amount of any deduction allowed pursuant to subsection (a) of section one hundred sixty-seven of the internal revenue code as if the taxpayer has not made an election pursuant to subsection (n) of section one hundred sixty-eight of the internal revenue code.

(Y) For taxable years beginning on or after January first, two thousand twenty-five, the amount of any foreign and domestic research or

experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code, paid or incurred in each taxable year on and after January first, two thousand twenty-five, amortized over a sixty-month period as if the election in subsection (c) of section 174A of the internal revenue code applied to such foreign and domestic research or experimental expenditures.

(Z) For taxable years beginning on or after January first, two thousand twenty-five, the remaining amount of any foreign and domestic research or experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code, paid or incurred prior to January first, two thousand twenty-five, determined as if section one hundred seventy-four of the internal revenue code in effect as of January first, two thousand twenty-two, applied to such expenditures.

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

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

(B) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in subparagraphs (A), (B) and (S) of paragraph one hereof;

(C) taxes paid or accrued to the United States on or measured by income or premiums;

(D) taxes imposed under this article;

(E) In those instances where a credit for the special additional mortgage recording tax is allowed under paragraph one of subdivision (e) of section fifteen hundred eleven of this article, the amount allowed as an exclusion or deduction for the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter in determining the entire net income which the taxpayer is required to report to the United States treasury department for such taxable year;

(F) unless the credit allowed pursuant to subdivision (e) of section fifteen hundred eleven of this article is reflected in the computation of the gain or loss so as to result in an increase in such gain or decrease in such loss, for federal income tax purposes, from the sale or

other disposition of the property with respect to which the special additional mortgage recording tax imposed pursuant to subdivision one-a of section two hundred fifty-three of this chapter was paid, the amount of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter which was paid and which is reflected in the computation of the basis of the property so as to result in a decrease in such gain or increase in such loss for federal income tax purposes from the sale or other disposition of the property with respect to which such tax was paid;

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

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

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

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

(H) in the discretion of the commissioner, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital, or to the income described in subparagraphs (S), (U) and (V) of paragraph one of this subdivision;

(I) in the case of a life insurance company, the provisions of subparagraph (B) of this paragraph shall not apply to the policyholders' share of the items described in such subparagraph. For purposes of this subparagraph, the policyholders' share means the percentage determined under paragraph two of subsection (a) of section eight hundred twelve of the internal revenue code.

(J) in the case of a taxpayer who is separately or as a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of

the insurance law, such taxpayer's distributive or pro rata share of the allocated entire net income of such business as determined under this section and section fifteen hundred four of this article, provided however, in the event such allocated entire net income is a loss, such taxpayer's distributive or pro rata share of such loss shall not be subtracted from federal taxable income in computing entire net income under this section.

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

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

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

(N) upon the disposition of property to which paragraph ten of this

subdivision applies, the amount, if any, by which the aggregate of the amounts described in such paragraph ten attributable to such property exceeds the aggregate of the amounts described in subparagraph (M) of this paragraph attributable to such property;

(N-1) premiums paid for environmental remediation insurance, as defined in section twenty-three of this chapter, and deducted in determining federal taxable income, to the extent of the amount of the environmental remediation insurance credit allowed under such section twenty-three and subdivision (w) of section fifteen hundred eleven of this article;

(O) the amount of unearned premiums on outstanding business at the end of the preceding taxable year excluded from premiums earned pursuant to the provisions of section 832(b)(4)(B) of the internal revenue code;

(P) the amount of unearned premiums on outstanding business at the end of the preceding year excluded from premiums earned pursuant to the provisions of section 832(b)(7)(B)(i) of the internal revenue code;

(Q) the amount excluded from premiums earned pursuant to the provisions of section 832(b)(8)(A)(i) of the internal revenue code which is the difference between the amount of discounted unearned premiums on outstanding business at the end of the preceding taxable year and the amount of unearned premiums on outstanding business at the end of the preceding taxable year;

(R) the amount which is the difference between the amount of discounted unpaid losses at the end of the preceding federal taxable year used in the computation of losses incurred for the taxable year pursuant to section 832(b)(5)(A) of the internal revenue code, and the amount of unpaid losses at the end of the preceding federal taxable year that would have been used in such computation for the taxable year if such losses were not discounted pursuant to the provisions of section 846(a) of the internal revenue code; and

(S) the amount of the deduction claimed by the taxpayer pursuant to the provisions of section 847(1) of the internal revenue code.

(T) for taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph sixteen of this subdivision, and other than qualified New York Liberty Zone

property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, the amount allowable as a deduction under section 167 of the internal revenue code.

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

(V) The amount of any federal deduction for taxes imposed under article twenty-three of this chapter.

(W) The amount of any federal deduction allowed pursuant to subsection (c) of section 965 of the internal revenue code.

(X) The amount of any federal deduction allowed pursuant to section 250(a)(1)(A) of the internal revenue code.

(Y) The amount of the federal deduction allowed pursuant to section 250(a)(1)(B) of the internal revenue code.

(Z) The amount of any gain excluded from federal gross income for the taxable year by subparagraph (A) of paragraph (1) of subsection (a) of section 1400Z-2 of the internal revenue code.

(AA) For taxable years beginning on or after January first, two thousand twenty-five, in the case of qualified production property described in paragraph two of subsection (n) of section one hundred sixty-eight of the internal revenue code, any amount which the taxpayer claimed as a deduction under subsection (a) of section one hundred sixty-seven of the internal revenue code that included an allowance solely as a result of an election made pursuant to subsection (n) of section one hundred sixty-eight of the internal revenue code.

(BB) For taxable years beginning on or after January first, two thousand twenty-five, any amount claimed as a deduction under sections one hundred seventy-four and 174A of the internal revenue code in effect as of January first, two thousand twenty-five, and any amount claimed as a deduction pursuant to federal Public Law 119-21, title VII, section 70302(f)(2)(a), for foreign and domestic research or experimental expenditures, as defined in sections one hundred seventy-four and 174A of the internal revenue code.

(3) In determining entire net income, there shall be subtracted, to the extent not deductible in determining federal taxable income:

(A) interest on indebtedness incurred or continued to purchase or

carry obligations or securities the income from which is subject to tax under this article but exempt from federal income tax;

(B) ordinary and necessary expenses paid or incurred during the taxable year attributable to income which is subject to tax under this article but exempt from federal income tax; and

(C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this article but exempt from federal income tax.

(4) Any "net operating loss deduction" or "operations loss deduction" allowable under sections one hundred seventy-two or eight hundred ten of the internal revenue code, respectively, which is allowable to the taxpayer for federal income tax purposes:

(A) shall be adjusted to reflect the modifications required by the other paragraphs of this subdivision;

(B) shall not, however, exceed any such deduction allowable to the taxpayer for the taxable year for federal income tax purposes; and

(C) shall not include any such loss incurred in a taxable year beginning prior to January first, nineteen hundred seventy-four or during any taxable year in which the taxpayer was not subject to the tax imposed under section fifteen hundred one.

(5) In case of property of a taxpayer acquired prior to January first, nineteen hundred seventy-four, and disposed of thereafter, the computation of entire net income shall be modified as follows:

(A) no gain shall be deemed to have been derived if either the cost or the fair market price or value on January first, nineteen hundred seventy-four, exceeds the value realized;

(B) no loss shall be deemed to have been sustained if either the cost or the fair market price or value on January first, nineteen hundred seventy-four, is less than the value realized;

(C) where both the cost and the fair market price or value on January first, nineteen hundred seventy-four, are less than the value realized, the basis for computing gain shall be the cost or the fair market price or value on such date, whichever is higher;

(D) where both the cost and the fair market price or value on January first, nineteen hundred seventy-four, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on such date, whichever is lower.

(6) There shall be excluded from the computation of entire net income any amount allowed as a deduction for federal income tax purposes for the taxable year under section twelve hundred twelve of the internal revenue code as a capital loss carryforward to the taxable year which resulted from a capital loss occurring in any taxable year in which the taxpayer was not subject to tax under section fifteen hundred one.

(7) There shall be excluded from the computation of entire net income the amount of any income or gain from the sale of real or personal property which is includible in determining federal taxable income for the taxable year pursuant to the installment method under section four hundred fifty-three of the internal revenue code to the extent such income or gain is from a sale of such property which occurred in a taxable year when the taxpayer was not subject to tax under section fifteen hundred one.

(8) Entire net income shall be computed without regard to subsection (b) of section eight hundred thirty-one of the internal revenue code.

(9) In computing the entire net income of a taxpayer

(A) which is a fire or life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding and strengthening charitable, religious, missionary, educational or philanthropic institutions, by issuing insurance and annuity contracts only to or for the benefit of such institutions, to individuals engaged in the services of such institutions and to members of the immediate families of such individuals, or

(B) which is a life insurance company which has been organized for the purpose of establishing a non-profit voluntary employees beneficiary association to provide life, sick, accident or other benefits to eligible employees or their beneficiaries, and is operated exclusively for said purposes and without profit, direct or indirect, to any private shareholder or individual, and is duly exempt from income taxation pursuant to the United States internal revenue code, the life insurance company taxable income (which shall include, in the case of a stock life insurance company which has an existing policyholders surplus account, the amount of direct and indirect distributions during the taxable year to shareholders from such account) or taxable income, as the case may be, of such taxpayer for the taxable year shall be computed without

regard to any income, gains, losses, deductions, reserves, surplus or any other item, derived from, or attributable or allocable to, contracts described in subsection (a) of section eight hundred eighteen of the internal revenue code.

(10) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from the determination of entire net income pursuant to subparagraph (K) of paragraph two of this subdivision, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(11)(A) Notwithstanding the provisions of subparagraph (P) of paragraph one of this subdivision, for taxable years beginning after December thirty-first, nineteen hundred ninety-two and ending before December thirty-first, nineteen hundred ninety-six, entire net income shall include the amount determined under subparagraph (B) of this paragraph. This amount shall be included in entire net income only if the taxpayer claimed the deduction allowed by subdivision one of section eight hundred forty-seven of the internal revenue code in any taxable year beginning after December thirty-first, nineteen hundred eighty-seven and ending before January first, nineteen hundred ninety-three.

(B) The amount to be included in entire net income under this paragraph shall be determined as follows. The taxpayer shall calculate the total amount that will be required to be included in federal gross income pursuant to the provisions of subdivisions five and six of section eight hundred forty-seven of the internal revenue code for federal taxable years beginning after December thirty-first, nineteen

hundred ninety-two as a result of the deduction claimed by the taxpayer in federal taxable years beginning after December thirty-first, nineteen hundred eighty-seven and before January first, nineteen hundred ninety-three pursuant to the provisions of subdivision one of section eight hundred forty-seven of the internal revenue code. The taxpayer shall divide such total amount by three. An amount equal to the resulting quotient shall be included in entire net income in each of the taxpayer's first three taxable years beginning on or after January one, nineteen hundred ninety-three.

12. Emerging technology investment deferral. In the case of any sale of a qualified emerging technologies investment held for more than thirty-six months and with respect to which the taxpayer elects the application of this subsection, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any qualified emerging technologies investment purchased by the taxpayer during the three hundred sixty-five-day period beginning on the date of such sale, reduced by any portion of such cost previously taken into account under this paragraph. For purposes of this paragraph the following shall apply:

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

(2) A qualified emerging technology investment is a qualified investment, that was held by the taxpayer for at least thirty-six months, in a company defined in paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law or an investment in a partnership or limited liability company that is taxed as a partnership to the extent that such partnership or limited liability company invests in qualified emerging technology companies.

(3) For purposes of determining whether the nonrecognition of gain under this subsection applies to a qualified emerging technologies investment that is sold, the taxpayer's holding period for such investment and the qualified emerging technologies investment that is

purchased shall be determined without regard to Internal Revenue Code § 1223.

13. Amounts deferred. The amount deferred under paragraph twelve of this subdivision shall be added to entire net income when the reinvestment in the New York qualified emerging technology company which qualified a taxpayer for such deferral is sold.

* (14) For taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph sixteen of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one.

* NB There are 2 par (14)'s

* (14) Related members expense add back. (A) Definitions. (i) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(ii) Effective rate of tax. "Effective rate of tax" means, as to any state or U.S. possession, the maximum statutory rate of tax imposed by the state or possession on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or U.S. possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate

of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(iii) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

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

(B) Royalty expense add backs. (i) Except where a taxpayer is included in a combined return with a related member pursuant to subdivision (f) of section fifteen hundred fifteen of this article, for the purpose of computing entire net income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(ii) Exceptions. (I) The adjustment required in this paragraph shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the

form specified by the commissioner, meets all of the following requirements: (a) the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (b) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (c) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(II) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (a) the related member was subject to tax on or measured by its net income in this state or another state or possession of the United States or some combination thereof; (b) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (c) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section fifteen hundred two, fifteen hundred two-a, or fifteen hundred two-b of this article for the taxable year.

(III) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (a) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (b) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (c) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (d) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this state; and (e) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(IV) The adjustment required in this paragraph shall not apply if the taxpayer and the commissioner agree in writing to the application or use

of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

* NB There are 2 par (14)'s

(15) For taxable years beginning after December thirty-first, two thousand two, upon the disposition of property to which paragraph fourteen of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph (R) of paragraph one and subparagraph (T) of paragraph two of this subdivision attributable to such property.

(16) For purposes of paragraphs fourteen and fifteen of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section 168 of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after December thirty-first, two thousand two. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to

the easterly bank of the East River.

(17) Depreciation and interest adjustments for covered properties owned by an institutional real estate investor. (A) Notwithstanding any other provision of this section, in the case of a taxpayer that is an institutional real estate investor or partner, member or shareholder of an entity that is an institutional real estate investor as defined in paragraph (c-4) of subdivision nine of section two hundred eight of this chapter, entire net income shall be computed with adjustments for depreciation and interest related to covered properties as set forth in this paragraph.

(B) Depreciation deductions. With respect to covered properties, no deduction for depreciation allowed under the internal revenue code or this section shall be allowed.

(C) Federal interest deductions. With respect to covered properties, the interest deduction for federal income tax purposes allowed under section one hundred sixty-three of the internal revenue code shall not be allowed and must be added back in the computation of entire net income, except with respect to interest paid or accrued in the taxable year when such covered property is sold to an individual for use as the principal residence of such individual or sold to a nonprofit organization that has as its principal purpose the creation, development, or preservation of affordable housing. For purposes of this subparagraph, any amount of interest that would have been allowed under section one hundred sixty-three of the internal revenue code in connection with a covered property but for an election to treat such interest as chargeable to capital account shall be treated as an amount allowed under section one hundred sixty-three of the internal revenue code.

(c) Attribution of income to different taxable years. The tax commission may, whenever necessary in order to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

§ 1504. Allocation. (a) Allocation of entire net income. The portion of entire net income of a taxpayer to be allocated within the state

shall be the amount determined by multiplying such income by the income allocation percentage determined by:

(1) ascertaining the percentage which the taxpayer's New York premiums for the taxable year bear to the taxpayer's total premiums for the taxable year, and multiplying such percentage by nine,

(2) ascertaining the percentage which total wages, salaries, personal service compensation and commissions for the taxable year of employees, agents and representatives of the taxpayer within New York bear to the total wages, salaries, personal service compensation and commissions for the taxable year of all the taxpayer's employees, agents and representatives, and

(3) adding the amounts determined under paragraphs one and two and dividing the sum by ten.

(b) Definition of premiums. (1) For purposes of paragraph one of subdivision (a), the term "premium" includes all amounts received as consideration for insurance contracts, reinsurance contracts and annuity contracts and shall include premium deposits, assessments, policy fees, membership fees and every other compensation for such contract. The term "total premiums" means total gross premiums or deposit premiums or assessments, less returns thereon, on all policies, annuity contracts, certificates, renewals, policies subsequently cancelled, insurance and reinsurance executed, issued or delivered on property or risks, including premiums for reinsurance assumed, less dividends on such total premiums, including unused or unabsorbed portions of premium deposits paid or credited to policyholders but not including deferred dividends paid in cash to policyholders on maturing policies, nor cash surrender values, and less premiums on reinsurance ceded.

(2) For purposes of paragraph one of subdivision (a), "New York premiums" shall be determined as follows:

(A) For all premiums other than premiums described in subparagraph (B) or (C) of this paragraph, "New York premiums" means that portion of total premiums written, procured or received on property or risks located or resident in New York and shall also include premiums written, procured or received in this state on business which cannot be specifically assigned as located or resident in any other state or states, other than premiums described in subdivision (b) of section fifteen hundred twelve. Provided however, in the case of special risk

premiums, "New York premiums" shall include only those premiums written, procured or received in this state on property or risks located or resident in this state.

(B) For premiums on reinsurance, "New York premiums" shall be determined as provided in subparagraph (A) of this paragraph except that where the location or residence of the property or risk covered by the reinsurance cannot be ascertained, "New York premiums" shall mean the portion of premiums for reinsurance determined by multiplying the amount of premiums from reinsurance ceded by each company to the taxpayer by the percentage determined under paragraph one of subdivision (a) of this section for each such ceding company for the preceding taxable year.

(C) For premiums from marine insurance, "New York premiums" means (i) that portion of premiums from such marine insurance as are written, procured or received on property or risks located or resident in this state and, (ii) to the extent not otherwise includible in "New York premiums" under clause (i) hereof, the premiums for such marine insurance written within this state on property or risks which cannot be specifically assigned as located or resident in any other state or country, provided however, in the case of special risk premiums, "New York premiums" shall include only those premiums written, procured or received in this state on property or risks located or resident in this state. For purposes of this subparagraph, marine insurance means insurance written, procured or received upon hulls, freights or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from, importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for, and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks.

(3) For the purpose of paragraph one of subdivision (a), "total premiums" shall not include special risk premiums unless the special risk premium was written, procured or received in this state on property or risks located or resident in this state. "Total premiums" shall be reported on a written basis or on a paid-for basis, consistent with the

basis required by the annual statement filed with the superintendent of financial services pursuant to section three hundred seven of the insurance law.

(c) Allocation of capital. (1) Business capital and investment capital. The portion of the taxpayer's business and investment capital of a taxpayer to be allocated within the state shall be determined by multiplying the amount thereof by the allocation percentage determined as provided in subdivision (a) of this section.

(2) Subsidiary capital. The portion of the taxpayer's subsidiary capital to be allocated within the state shall be determined by multiplying the amount of subsidiary capital invested in each subsidiary during the period covered by its return (or, in the case of any such capital so invested during only a portion of such period, such portion of such capital) by the percentage, if any, of the entire capital, or the issued capital stock, or the net income, as the case may be, of such subsidiary required to be allocated within the state on the return or returns, if any, required of such subsidiary under this chapter for the preceding year, and adding the sums so obtained.

(d) If it shall appear to the tax commission that the income allocation percentage determined as hereinabove provided does not properly reflect the activity, business or income of a taxpayer within the state, the tax commission shall be authorized, in its discretion, to adjust it by:

(1) excluding one or more factors therein;

(2) including one or more other factors therein, such as expenses, purchases, receipts other than premiums, real property or tangible personal property;

(3) or any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state. The tax commission from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

§ 1505. Limitation on tax. (a) (1) Domestic, foreign and alien insurance corporations except life insurance corporations. Notwithstanding the provisions of sections fifteen hundred one and

fifteen hundred ten of this article, and except as otherwise provided in paragraph two of this subdivision, the amount of taxes imposed under such sections for taxable years beginning on or after January first, nineteen hundred seventy-seven and before January first, two thousand three, computed without regard to any credits allowable against such tax other than those credits provided under subdivisions (g) and (h) of section fifteen hundred eleven of this article, shall not exceed an amount computed as if such taxes were determined solely under section fifteen hundred ten, except that for purposes of the limitation provided herein, the rate of tax under such section shall be deemed to be (i) two and six-tenths percent for taxable years beginning on or after January first, nineteen hundred seventy-seven and before July first, two thousand, (ii) two and four tenths percent for taxable years beginning after June thirtieth, two thousand and before July first, two thousand one, (iii) two and two tenths percent for taxable years beginning after June thirtieth, two thousand one and before July first, two thousand two, and (iv) two percent for taxable years beginning after June thirtieth, two thousand two.

(2) Domestic, foreign and alien life insurance corporations. The provisions of this paragraph shall apply to taxpayers subject to tax under paragraph one of subdivision (b) of section fifteen hundred ten of this article. Notwithstanding the provisions of sections fifteen hundred one and fifteen hundred ten of this article, the amount of taxes imposed under such sections for taxable years beginning on or after January first, nineteen hundred seventy-seven, computed without regard to any credits allowable against such tax other than those credits provided under subdivisions (g) and (h) of section fifteen hundred eleven of this article, shall not exceed an amount computed as if such taxes were determined solely under section fifteen hundred ten, except that for purposes of the limitation provided herein, the rate of tax under such section shall be deemed to be (i) two and six-tenths percent for taxable years beginning on or after January first, nineteen hundred seventy-seven and before January first, nineteen hundred ninety-eight, and (ii) two percent for taxable years beginning on or after January first, nineteen hundred ninety-eight.

(b) Notwithstanding the provisions of sections fifteen hundred one and fifteen hundred ten of this article, in the case of taxpayers subject to

tax under subdivision (b) of section fifteen hundred ten, the total amount of tax imposed under this article, computed before the application of any credits allowable against such tax, shall in no event be less than the amount computed as if such tax was determined solely under section fifteen hundred ten, except that the rate of tax under section fifteen hundred ten shall be deemed to be one and five-tenths percent.

(c) For purposes of the limitation set forth in subdivision (a) of this section, in the case of an insurance corporation more than ninety-five percent of whose premiums are received as consideration for annuity contracts or are for policies and insurance described in paragraph two of subdivision (c) of section fifteen hundred ten of this article, in determining the amount of tax computed solely under section fifteen hundred ten of this article, gross direct premiums subject to tax under such section shall include such amounts received as consideration for annuity contracts and premiums for policies and insurance, including any separate costs assessed by such insurance corporation upon its policyholders, described in paragraph two of subdivision (c) of such section that exceed ninety-five percent of all premiums received, including consideration for annuity contracts and premiums for policies and insurance (and any separate costs assessed by such insurance corporations upon its policyholders) described in paragraph two of subdivision (c) of such section.

§ 1505-a. Metropolitan transportation business tax surcharge on insurance corporations.

(a) (1) Every domestic insurance corporation and every foreign or alien insurance corporation, and every life insurance corporation described in subdivision (b) of section fifteen hundred one of this article, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transportation district in a corporate or organized capacity, or of maintaining an office in the metropolitan commuter transportation district, except corporations specified in subdivision (c) of section fifteen hundred twelve of this article, shall annually pay, in addition to the taxes otherwise imposed

by this article, a tax surcharge on the taxes imposed under this article after the deduction of any credits otherwise allowable under this article as allocated to such district. Such taxes shall be allocated to such district for purposes of computing such tax surcharge upon taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article by applying the methodology, procedures and computations set forth in subdivisions (a) and (b) of section fifteen hundred four of this article, except that references to terms denoting New York premiums, and total wages, salaries, personal service compensation and commissions within New York shall be read as denoting within the metropolitan commuter transportation district and terms denoting total premiums and total wages, salaries, personal service compensation and commissions shall be read as denoting within the state. If it shall appear to the commissioner that the application of the methodology, procedures and computations set forth in such subdivisions (a) and (b) does not properly reflect the activity, business or income of a taxpayer within the metropolitan commuter transportation district, then the commissioner shall be authorized, in the commissioner's discretion, to adjust such methodology, procedures and computations for the purpose of allocating such taxes by:

(A) excluding one or more factors therein;

(B) including one or more other factors therein, such as expenses, purchases, receipts other than premiums, real property or tangible personal property; or

(C) any other similar or different method which allocates such taxes by attributing a fair and proper portion of such taxes to the metropolitan commuter transportation district. The commissioner from time to time shall publish all rulings of general public interest with respect to any application of the provisions of the preceding sentence. The commissioner may promulgate rules and regulations to further implement the provisions of this section.

(2) Such taxes shall be allocated to such district for purposes of computing such tax surcharge upon taxpayers subject to tax under section fifteen hundred two-a of this article pursuant to a fraction, the denominator of which shall be the direct premiums subject to tax under section fifteen hundred ten of this article, and the numerator of which shall be the direct premiums subject to tax under section fifteen

hundred ten of this article that are written on risks located or resident in the metropolitan commuter transportation district, including premiums written, procured or received in the metropolitan commuter transportation district on business that cannot be specifically assigned as located or resident in an area of New York state outside the metropolitan commuter transportation district, or in another state or states; provided, however, in the case of special risk premiums, the numerator shall include only those premiums written, procured or received in the metropolitan commuter transportation district on property or risks located or resident in the metropolitan commuter transportation district. If it shall appear to the commissioner that the application of the methodology, procedures and computations set forth in this paragraph does not properly reflect the activity, business or income of a taxpayer within the metropolitan commuter transportation district, then the commissioner shall be authorized, in the commissioner's discretion, to adjust such methodology, procedures and computations for the purpose of allocating such taxes by: (A) excluding the factor therein and including one or more other factors such as expenses, purchases, receipts other than premiums, real property or tangible personal property; or (B) any other similar or different method which allocates such taxes by attributing a fair and proper portion of such taxes to the metropolitan commuter transportation district. The commissioner from time to time shall publish all rulings of general public interest with respect to any application of the provisions of the preceding sentence. The commissioner may promulgate rules and regulations to further implement the provisions of this section.

(3) Such tax surcharge shall be computed at the rate of seventeen percent of the taxes imposed under sections fifteen hundred one, fifteen hundred two-a, and fifteen hundred ten of this article, as limited or otherwise determined by subdivision (a) or (b) of section fifteen hundred five of this article, as allocated to such district, after the deduction of any credits otherwise allowable under this article. Provided however, that for taxable years commencing on or after July first, two thousand, and in the case of taxpayers subject to tax under section fifteen hundred two-a of this article, for taxable years of such taxpayers beginning on or after July first, two thousand and before January first, two thousand three, such surcharge shall be calculated as

if (i) the rate of the tax computed under paragraph one of subdivision (a) of section fifteen hundred two of this article was nine percent and (ii) the rate of the limitation on tax set forth in section fifteen hundred five of this article for domestic, foreign and alien insurance corporations except life insurance corporations was two and six-tenths percent.

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

(c) Notwithstanding any contrary provisions of state or local law, the tax surcharge imposed under this section shall not be allowed as a deduction in the computation of any state or local tax imposed under this chapter or any chapter or local law. The credits set forth in section fifteen hundred eleven of this article shall not be allowed against the tax surcharge imposed by this section.

(d) (1) If, by the laws of any state other than this state, or by the action of any public official of such other state, any insurer organized or domiciled in this state, or the duly authorized agents thereof, subject to the business tax surcharge imposed by this section shall be required to pay taxes for the privilege of doing business in such other state which taxes are imposed or assessed because of the taxes imposed or assessed under this section, in computing the tax imposed by this section a credit shall be allowed for taxes paid to other states, which credit shall be determined pursuant to the provisions of this section; provided, however, the credit allowed any insurer under this subdivision shall in no event be greater than the tax surcharge payable by such insurer pursuant to this section for the taxable year with respect to which such amount has been imposed or assessed by such other states.

(2) In addition to any other requirements of this article, an insurer claiming a credit under this subdivision shall attach to the returns required pursuant to this section and section fifteen hundred fifteen of this article a computation identifying the credit attributable to taxes paid to other states because of the tax surcharge imposed by this section, which credit shall be further broken down to reflect amounts and taxable years to which the retaliatory taxes giving rise to the credit relate. The credit attributable to taxes paid to other states because of the tax surcharge imposed by this section shall be the

difference between: (i) the credit which would be claimed by the insurer pursuant to subdivision (c) of section fifteen hundred eleven of this chapter if the tax surcharge imposed by this section were permitted in the computation of such credit, and (ii) the credit which is claimed by such insurer pursuant to such subdivision (c).

(3) To the extent not inconsistent with the provisions of this subdivision, the provisions of paragraphs four and five of subdivision (c) of section fifteen hundred eleven of this chapter shall apply with respect to the credit allowed under this subdivision.

(4) No credit against taxes paid to other jurisdictions under subdivision (c) of section fifteen hundred eleven of this article shall be allowed for any taxes paid under this section by any domestic insurance corporation, including life insurance corporations subject to tax under this section.

(e) The provisions concerning returns under section fifteen hundred fifteen of this article shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a return covering the tax surcharges imposed by this section, such automatic extension shall be allowed only if a taxpayer files with the commissioner an application for extension in such form and manner as said commissioner may prescribe by regulation and such taxpayer pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's return for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the return is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the return is required to be filed, provided such tax surcharge of such domestic, foreign or alien insurance corporation including life insurance corporations, as described in subdivision (b) of section fifteen hundred one of this article, shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing

provisions of this section would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable are applicable to the tax surcharge imposed by this section.

§ 1510. Additional franchise tax on insurance corporations. (a)

Domestic, foreign and alien insurance corporations except life insurance corporations. Except as hereinafter provided, for taxable years beginning before January first, two thousand three every domestic insurance corporation, every foreign insurance corporation and every alien insurance corporation, other than such corporations transacting the business of life insurance, (1) authorized to transact business in this state under a certificate of authority from the superintendent of financial services or (2) which is a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums thereon, written on risks located or resident in this state. The rate of tax imposed by this subdivision shall be two percent on premiums written on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-five, one and nine-tenths percent on premiums written on or after January first, nineteen hundred seventy-five and before January first, nineteen hundred seventy-six, one and eight-tenths percent on premiums written on or after January first, nineteen hundred seventy-six and before January first, nineteen hundred seventy-eight, one and two-tenths percent on premiums written on or after January first, nineteen hundred seventy-eight and before January first, nineteen hundred ninety-two and one and three-tenths percent on premiums written on and after such date. Provided, however, that the rate of tax imposed by this subdivision on all gross direct premiums, less return premiums thereon, for accident and health insurance contracts shall be one and six-tenths percent for such premiums written on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-eight,

and one percent for such premiums written on or after January first, nineteen hundred seventy-eight.

(b) Domestic, foreign and alien life insurance corporations. (1) Except as hereinafter provided, every domestic life insurance corporation, and every foreign and alien life insurance corporation authorized to transact business in this state under a certificate of authority from the superintendent of financial services, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums thereon, received in cash or otherwise on risks resident in this state, including supplemental contracts for total and permanent disability benefits and accidental death benefits. The rate of such tax shall be (i) one and six-tenths percent on such premiums received on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-eight, (ii) one percent on such premiums received on or after January first, nineteen hundred seventy-eight and before January first, nineteen hundred eighty-seven, (iii) eight-tenths percent on such premiums received on or after January first, nineteen hundred eighty-seven and before January first, nineteen hundred ninety-eight, and (iv) seven-tenths percent on such premiums received on or after January first, nineteen hundred ninety-eight.

(2) Every such life insurance corporation which shall obtain a certificate of authority to transact business in this state or a renewal of such certificate from the superintendent of financial services shall, upon the expiration of such certificate for any cause or upon its ceasing to transact new business in this state, continue to pay a tax upon its business remaining in force in this state at the rate and as computed in this subdivision.

(c) Determination of direct premiums--general provisions. (1) The term "premium" includes all amounts received as consideration for insurance contracts, reinsurance contracts or contracts with health maintenance organizations for health services, other than for annuity contracts, and shall include premium deposits, assessments, policy fees, membership fees, any separate costs by carriers assessed upon their policyholders and every other compensation for such contract. In ascertaining the

amount of direct premiums upon which a tax is payable under this section there shall be first determined the amount of total gross premiums or deposit premiums or assessments, less returns thereon, on all policies, certificates, renewals, policies subsequently cancelled, insurance and reinsurance executed, issued or delivered on property or risks located or resident in this state, including premiums for reinsurance assumed, and also including premiums written, procured or received in this state on business which cannot specifically be allocated or apportioned and reported as taxable premiums or which have been used as a measure of a tax on business of any other state or states. Provided however, in the case of special risk premiums, direct premiums shall include only those premiums written, procured or received in this state on property or risks located or resident in this state. The reporting of premiums for the purpose of the tax imposed by this section shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement filed with the superintendent of financial services pursuant to section three hundred seven of the insurance law.

(2) The term "gross direct premiums," as used in this section, shall not include premiums for policies issued pursuant to section four thousand two hundred thirty-six of the insurance law and premiums for insurance upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from, importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for, and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks. The term "gross direct premiums," as used in this section, also shall not include any premiums that this state is prohibited from taxing pursuant to federal law, including (i) subsection (f) of section 8909 of title 5 of the united states code, (ii) subsection (g) of section 1395w-24 of title 42 of the united states code, (iii) subsection (g) of section 1395w-112 of title 42 of the United States code, and (iv) subparagraph (B) of paragraph (4) of subsection (k) of section 1395mm of title 42 of the United States code.

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

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

(B) Such premiums, less return premiums thereon, which have been received by way of reinsurance from corporations or other insurers not authorized to transact business in this state to the extent that such premiums relate to transactions (i) that are authorized by section two thousand one hundred five of the insurance law with respect to excess line insurance, and (ii) with respect to which sums are payable by licensed excess line brokers to the superintendent of financial services pursuant to section two thousand one hundred eighteen of the insurance law; and

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

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

(e) Powers and duties of the superintendent of financial services.

(1) The superintendent of financial services shall, on behalf of the commissioner, have the power, duty and responsibility to examine returns of an insurance corporation filed with him pursuant to section fifteen hundred fifteen and, together with any other information within his possession or that may come into his possession, to ascertain the correct amount of tax imposed under this section of any insurance corporation. For the purpose of ascertaining the correctness of any such tax imposed under this section or for the purpose of making an estimate

of the tax liability under this section of any insurance corporation, the superintendent shall have the power to examine or cause to have examined by any agent or representative designated by him for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return.

(2) If the superintendent of financial services ascertains that the amount of tax imposed under this section as shown on the return of any insurance corporation is less than the amount of tax disclosed by his or her examination, he or she shall propose, in writing, to the commissioner the issuance of a notice of deficiency for the amount due. If an insurance corporation fails to file a return with the superintendent of financial services within the time required for the filing of such return (with regard to any extension of time for the filing thereof), the superintendent of financial services shall make an estimate of the amount of tax due for the period in respect to which such insurance corporation failed to file the return. The estimate shall be made from any available information which is in the possession or may come into the possession of the superintendent of financial services and he shall propose, in writing, to the commissioner the issuance of a notice of deficiency for the amount of such estimated tax. Any proposal pursuant to this paragraph shall set forth the basis thereof and the details of its computation.

(3) The commissioner shall, on receipt of a proposal from the superintendent of financial services pursuant to paragraph two of this subdivision, review such proposal and if satisfied as to the correctness thereof shall take appropriate action under this chapter for the assessment and collection of the amount of tax, together with interest and penalties, either shown by such proposal to be due or which the commissioner ascertains to be due. The provisions of this subdivision shall not in any way be deemed to limit the power of the commissioner to conduct such examination, or investigation as it deems necessary in order to carry out its duties with respect to the taxes imposed under this section.

(4) Subject to the consent of the superintendent of financial services and notwithstanding any other provisions of law to the contrary, the commissioner may delegate such other of his or her powers and duties with respect to the administration and collection of the taxes imposed

under this section to the superintendent of financial services, as the commissioner finds necessary in order to facilitate such administration and collection.

§ 1511. Credits. (a) Credit for certain other premium taxes. In computing the tax imposed by this article there shall be allowed a credit for the amount of taxes paid or accrued by the taxpayer during the taxable year on premiums for any insurance against loss or damage by fire under section nine thousand one hundred four or section nine thousand one hundred five of the insurance law or under the charters of the cities of Buffalo or New York; provided, however, that any unused credit remaining may not be carried over to any other year.

(b) Credit against reciprocal taxes imposed by this state. In assessing taxes under the reciprocal provisions of section one thousand one hundred twelve of the insurance law, credit shall be allowed for any taxes paid under this article.

(c) Credit for certain taxes payable to other jurisdictions. (1) If, by the laws of any state other than this state, or by the action of any public official of such other state, any insurer organized or domiciled in this state, or the duly authorized agents thereof, shall be required to pay taxes for the privilege of doing business in such other state and such amounts are imposed or assessed because the taxes which are or would be imposed under this chapter and the insurance law upon insurers organized or domiciled in such other state are greater than those required of insurers organized or domiciled in this state by the laws of such other state for the privilege of doing business therein, then and in every case, to the extent such amounts are legally due to such other states, an insurer organized or domiciled in this state may claim a credit, as hereinafter provided, against the tax payable pursuant to this article of a sum not to exceed ninety per cent of such amount. Provided, such credit shall in no event be greater than the tax payable pursuant to this article during the taxable year with respect to which such amount has been imposed or assessed by such other states. For purposes of this section, the term "taxes for the privilege of doing business" shall include, but shall not be limited to, a tax on or measured by income.

(2) A credit may be claimed for the amount computed as provided in paragraph one of this subdivision, on the return required pursuant to section fifteen hundred fifteen, against the tax imposed pursuant to this article for the taxable year in which such amount shall be paid. To the extent such credit shall exceed the amount payable pursuant to section fifteen hundred sixteen of this article for the taxable year against which the credit is allowed, the difference between the amount allowed as a credit and the tax payable pursuant to section fifteen hundred sixteen shall be credited or refunded by the tax commission, without interest.

(3) The credit allowed pursuant to this subdivision shall be in addition to the credits allowed pursuant to subdivisions (a) and (b) of this section.

(4) The superintendent of financial services and the tax commission shall examine claims for credit or refund made under this subdivision. If the superintendent of financial services or the tax commission shall determine that any amount for which a credit shall have been claimed was not legally due to another state or that an error exists in the amount of credit shown on such return, or the amount claimed as a refund or refunded, the tax commission shall take appropriate action under this chapter for the assessment and collection of any tax resulting from the disallowance of a claim for credit made under this subdivision or to disallow any such claim for refund.

(5) Any taxpayer which commences an action or proceeding in any state or federal court to contest the validity of any assessment made against the taxpayer by another state pursuant to a statute similar to section one thousand one hundred twelve of the insurance law or any other statute or regulation of another state under which retaliatory taxes or other charges are imposed or assessed against such taxpayer shall give the state tax commission and the superintendent of financial services written notice of the commencement of such action or proceeding within five days after such commencement.

(d) Credit relating to eligible business facilities. (1) On or after April first, nineteen hundred eighty-three, for taxable years beginning before January first, two thousand, a credit against the tax imposed by this article shall be allowed only to an insurance corporation owning or operating an eligible business facility where such corporation has

received a certificate of eligibility for tax credits, or a renewal or extension thereof, for such facility from the New York state job incentive board prior to April first, nineteen hundred eighty-three, or has received a certificate of eligibility for tax credits, or a renewal or extension thereof, for such facility from the state tax commission subsequent to such date pursuant to paragraph eight of this subdivision, and only with respect to such facility, to be computed as hereinafter provided.

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

(A) ascertaining the percentage which the total of eligible property values during the taxable year, as defined in paragraph four of this subdivision, bears to the average value of all real and tangible personal property connected with the insurance corporation and located within the state, during such year. For the purposes of this subparagraph only, real and tangible personal property connected with the insurance corporation shall include not only such property owned by the insurance corporation but also property rented to it, and the value of rented property shall be deemed to be eight times the net annual rental rate, that is, the annual rental rate paid by the insurance corporation less any annual rental rate received by it from subrentals.

(B) ascertaining the percentage which the total wages, salaries and other personal service compensation during the taxable year to employees, except general executive officers, serving in jobs created or retained in an eligible area (as the term "eligible area" was defined by section one hundred fifteen of the commerce law as it existed on March thirty-first, nineteen hundred eighty-three) by such business facility, bears to the total wages, salaries and other personal service compensation during such taxable year of such insurance corporation's employees within the state, except general executive officers.

(C) adding together the percentages so determined and dividing the result by two; provided, however, that if no wages, salaries or other personal service compensation was paid or incurred by the insurance corporation during such year to employees in this state, subparagraph (B) of this paragraph shall be disregarded and the amount of credit allowable shall be determined by multiplying the tax otherwise due by

the percentage specified in subparagraph (A) of this paragraph.

(3) In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two of such chapter.

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

(i) expenditures paid or incurred by the taxpayer for capital improvements consisting of the construction, reconstruction, erection or improvement of real property included in an eligible business facility, which construction, reconstruction, erection or improvement was commenced on or after July first, nineteen hundred sixty-eight and expenditures paid or incurred by the taxpayer for the acquisition of real property, included in an eligible business facility, on or after January first, nineteen hundred seventy-seven.

(ii) in the case of real property leased by the taxpayer from another party, eight times the portion of the net annual rental rate attributable to such expenditures paid or incurred by the lessor for such construction, reconstruction, erection or improvement commenced on or after July first, nineteen hundred sixty-eight and, with respect to real property leased by the taxpayer from another party on or after January first, nineteen hundred seventy-seven, eight times any remaining portion of the net annual rental rate.

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

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

(B) Provided, however, eligible property values for purposes of this subsection shall not include expenditures paid or incurred more than one year prior to the filing of an application for a certificate of

eligibility pursuant to section one hundred nineteen of the commerce law, as such section existed on March thirty-first, nineteen hundred eighty-three.

(5) The total of all credits allowed pursuant to this subdivision in any taxable year or years with reference to any eligible business facility shall not exceed the total eligible property values included in such facility.

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

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

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

(9) For purposes of the requirement for eligibility for the credit

allowed under this subdivision that a business facility create or retain not less than five jobs as provided in subdivision (c) of section one hundred eighteen of the commerce law as such section existed on March thirty-first, nineteen hundred eighty-three, a business facility shall have (i) created not less than five jobs only if the number of jobs for the taxable year exceeds the number of jobs at the time of the commencement of the project as stated on its application for initial approval by five or more; or (ii) retained not less than five jobs only if initial approval was based on the retention of five or more jobs and (A) the number of jobs for the taxable year is at least equal to the number of jobs at the time of the commencement of the project as stated on its application for initial approval or (B) where initial approval was based on the retention of fewer jobs than the number of jobs at the time of the commencement of the project as stated on its application for initial approval, the number of jobs for the taxable year is at least equal to the number approved for retention. For purposes of this paragraph, the phrase "initial approval was based on the retention of five or more jobs" shall mean that such initial approval was given by the job incentive board to an applicant that had not stated in its application for initial approval that it would increase the number of jobs at its facility by at least five.

(e) Mortgage recording tax credit. (1) A taxpayer shall be allowed a credit, to be credited against the tax imposed by this article. The amount of the credit shall be the amount of the special additional mortgage recording tax paid by the taxpayer pursuant to the provisions of subdivision one-a of section two hundred fifty-three of this chapter on mortgages recorded on and after January first, nineteen hundred seventy-nine. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in one or more of the counties comprising the metropolitan commuter transportation district and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate

not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in the county of Erie and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven.

(2) In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or section fifteen hundred two-a of this article, whichever is applicable. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(f) Credit relating to life and health insurance guaranty corporation assessments. (1) Allowance of credit. For taxable years beginning on or after January first, two thousand twenty-four, a credit shall be allowed against the tax imposed pursuant to this article (other than section fifteen hundred five-a of this article) as hereinafter provided.

(2) Amount of credit. The amount of the credit for each taxpayer shall equal the amount shown on the certificate of tax credit, or the amounts shown on such certificates, issued to such taxpayer pursuant to section seven thousand seven hundred twelve of the insurance law. With respect to each such certificate, the amount of the credit must be claimed in the taxable year that begins in the calendar year that such certificate is issued.

(3) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(4) Eligibility. To be eligible for the credit, the taxpayer shall have been issued a certificate, or certificates, of tax credit by the department of financial services pursuant to section seven thousand

seven hundred twelve of the insurance law, each of which certificates shall set forth the amount of the credit that may be claimed and the certificate date. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate, or certificates, of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation.

(5) Tax return requirement. The taxpayer is required to include with its tax return in the form prescribed by the commissioner, proof of receipt of its certificate, or certificates, of tax credit issued by the department of financial services.

(6) Information sharing. Notwithstanding any provision of this chapter, employees of the department of financial services and the department shall be allowed and are directed to share and exchange:

(A) information regarding the credit allowed or claimed pursuant to this subdivision and taxpayers that are claiming the credit; and

(B) information contained in or derived from credit claim forms submitted to the department. All information exchanged between the department of financial services and the department shall not be subject to public disclosure or inspection under article six of the public officers law.

(7) Credit recapture. If a certificate of tax credit issued by the department of financial services under section seven thousand seven hundred twelve of the insurance law is revoked by such department, the amount of credit described in this subdivision and claimed by the taxpayer prior to such revocation shall be added back to tax in the taxable year in which any such revocation becomes final. If an amount of credit on any such certificate of tax credit is modified by the department of financial services, the difference between the amount of credit described in this subdivision and claimed by the taxpayer prior to such modification and the modified amount shall be added back to tax in the taxable year in which any such modification becomes final.

(8) Net assessments. No amount of any net assessments paid by such taxpayer included as the basis for the calculation of the amount shown on any such certificate shall be the basis for any other tax credit under this chapter.

(g) Empire zone wage tax credit. (1) A taxpayer shall be allowed a

credit, to be computed as hereinafter provided, against the tax imposed by this article where the taxpayer has been certified pursuant to article eighteen-B of the general municipal law. The amount of the credit shall be as prescribed in paragraph four hereof.

(2) For purposes of this subdivision, the following terms shall have the following meanings: (A) "Empire zone wages" means wages paid by the taxpayer for full-time employment, other than to general executive officers, during the taxable year, in an area designated or previously designated as an empire zone or zone equivalent area pursuant to article eighteen-B of the general municipal law, where such employment is in a job created in the area (i) during the period of its designation as an empire zone, (ii) within four years of the expiration of such designation, or (iii) during the ten year period immediately following the date of designation as a zone equivalent area, provided, however, that if the taxpayer's certification under article eighteen-B of the general municipal law is revoked with respect to an empire zone or zone equivalent area, any wages paid by the taxpayer, on or after the effective date of such decertification, for employment in such zone shall not constitute empire zone wages.

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

An individual who satisfies the criteria set forth in clause (i), (ii), (iv) or (v) at the time of initial employment in the job with respect to which the credit is claimed, or who satisfies the criterion set forth in clause (iii) at such time or at any time within the previous two years, shall be a targeted employee so long as such

individual continues to receive empire zone wages.

(C) "Average number of individuals, excluding general executive officers, employed full-time" shall be computed by ascertaining the number of such individuals employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year or other applicable period, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year or other applicable period.

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

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

to any taxable year beginning more than four years following the taxable year in which designation as an empire zone expired or more than ten years after the designation as a zone equivalent area.

(4) The amount of the credit shall equal the sum of

(A) the product of three thousand dollars and the average number of individuals (excluding general executive officers) employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subdivision, who (i) received empire zone wages for more than half of the taxable year,

(ii) received, with respect to more than half of the period of employment by the taxpayer during the taxable year, an hourly wage which was at least one hundred thirty-five percent of the minimum wage specified in section six hundred fifty-two of the labor law, and

(iii) are targeted employees; and

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

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

(D) If a taxpayer is certified in an empire zone designated under subdivision (a) or (d) of section nine hundred fifty-eight of the general municipal law, the dollar amounts specified under subparagraph (A) or (B) of this paragraph shall be increased by five hundred dollars

for each qualifying individual under such subparagraph who received, during the taxable year, wages in excess of forty thousand dollars.

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

Provided, further, however, that the credit provided for herein with respect to the taxable year, and carryovers of such credit to the taxable year, deducted from the tax otherwise due, may not, in the aggregate, exceed fifty percent of (i) in the case of taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article, the lesser of (I) the limitation on tax computed pursuant to subdivision (a) of section fifteen hundred five, or (II) the greater of the sum of the taxes imposed under sections fifteen hundred one and fifteen hundred ten or the amount of tax computed pursuant to subdivision (b) of section fifteen hundred five, or (ii) for all other insurance corporations, the tax imposed under section fifteen hundred two-a of this article, computed without regard to any credit provided for under this article.

(5) The credit or carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article

or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence in paragraph four hereof, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

(g-1) Hire a vet credit. (1) Allowance of credit. For taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand twenty-nine, a taxpayer shall be allowed a credit, to be computed as provided in this subdivision, against the tax imposed by this article, for hiring and employing, for not less than twelve continuous and uninterrupted months (hereinafter referred to as the twelve-month period) in a full-time or part-time position, a qualified veteran within the state. The taxpayer may claim the credit in the year in which the qualified veteran completes the twelve-month period of employment by the taxpayer. If the taxpayer claims the credit allowed under this subdivision, the taxpayer may not use the hiring of a qualified veteran that is the basis for this credit in the basis of any other credit allowed under this article.

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

(A) who served on active duty in the United States army, navy, air force, space force, marine corps, coast guard or the reserves thereof, or who served in active military service of the United States as a member of the army national guard, air national guard, New York guard or New York naval militia, or who served in the active uniformed services of the United States as a member of the commissioned corps of the national oceanic and atmospheric administration or the commissioned corps of the United States public health service; who (i) was released from active duty by general or honorable discharge, or (ii) has a

qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service;

(B) who commences employment by the qualified taxpayer on or after January first, two thousand fourteen, and before January first, two thousand twenty-eight; and

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

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

(4) Amount of credit. The amount of the credit shall be fifteen percent of the total amount of wages paid to the qualified veteran during the veteran's first twelve-month period of employment. Provided, however, that, if the qualified veteran is a disabled veteran, as defined in paragraph (b) of subdivision one of section eighty-five of the civil service law, the amount of the credit shall be twenty percent of the total amount of wages paid to the qualified veteran during the veteran's first twelve-month period of employment. The credit allowed pursuant to this subdivision shall not exceed in any taxable year: (i) fifteen thousand dollars for any qualified veteran, other than a disabled veteran, employed in a full-time position for one thousand eight hundred twenty or more hours in one twelve-month period, (ii) twenty thousand dollars for any qualified veteran who is a disabled veteran employed in a full-time position for one thousand eight hundred twenty or more hours in one twelve-month period, (iii) seven thousand five hundred dollars for any qualified veteran, other than a disabled veteran, employed in a part-time position for at least one thousand forty hours but not more than one thousand eight hundred nineteen hours in one twelve-month period, and (iv) ten thousand dollars for any qualified veteran who is a disabled veteran employed in a part-time position for at least one thousand forty hours but not more than one

thousand eight hundred nineteen hours in one twelve-month period.

(5) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph four of subdivision (a) of section fifteen hundred two of this article or the minimum tax prescribed in section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following three years and may be deducted from the taxpayer's tax for such year or years.

(h) Empire zone capital credit. (1) A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to twenty-five percent of the sum of the following investments and contributions made during the taxable year and certified by the commissioner of economic development: (A) for taxable years beginning before January first, two thousand five, qualified investments made in, or contributions in the form of donations made to, one or more empire zone capital corporations established pursuant to section nine hundred sixty-four of the general municipal law prior to January first, two thousand five, (B) qualified investments in certified zone businesses which during the twelve month period immediately preceding the month in which such investment is made employed full-time within the state an average number of individuals, excluding general executive officers, of two hundred fifty or fewer, computed pursuant to the provisions of subparagraph (C) of paragraph two of subsection (g) of this section, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and (C) contributions of money to community development projects as defined in regulations promulgated by the commissioner of economic development. "Qualified investments" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity

not in corporate or partnership form in exchange for an ownership interest in such entity. The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed three hundred thousand dollars, and shall not exceed one hundred thousand dollars with respect to the investments and contributions described in each of subparagraphs (A), (B) and (C) of this paragraph.

(2) The credit and carryover of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence of this paragraph, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years. In addition, the amount of such credit, and carryovers of such credit to the taxable year, deducted from the tax otherwise due may not, in the aggregate, exceed fifty percent of (i) in the case of taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article, the lesser of (I) the limitation on tax computed pursuant to subdivision (a) of section fifteen hundred five, or (II) the greater of the sum of the taxes imposed under sections fifteen hundred one and fifteen hundred ten or the amount of tax computed pursuant to subdivision (b) of section fifteen hundred five, or (ii) for all other insurance corporations, the tax imposed under section fifteen hundred two-a of this article, computed without regard to any credit provided for under this article.

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

(3) Where the stock, partnership interest or other ownership interest

arising from a qualified investment as described in subparagraphs (A) and (B) of paragraph one of this subdivision is disposed of, the taxpayer's entire net income shall be computed, pursuant to regulations promulgated by the commissioner, so as to properly reflect the reduced cost thereof arising from the application of the credit provided for herein.

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

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

(C) The required portion of the credit originally allowed shall be the product of (i) the portion of such credit attributable to the property disposed of or the payment or contribution recovered and (ii) the applicable percentage.

(D) The applicable percentage shall be:

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

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

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

(5) If the designation of an area as an empire zone is no longer in effect because the designations of all empire zones pursuant to article eighteen-B of the general municipal law have expired, a taxpayer that

has made a contribution of money on or before the day immediately preceding the day the empire zones expired to a community development project approved by the commissioner of economic development shall be deemed eligible to claim the empire zone capital credit under subparagraph (C) of paragraph one of this subdivision for additional contributions made prior to April first, two thousand fourteen and certified by the commissioner of economic development to that community development project as payment of a commitment made by the taxpayer to that community development project before the empire zones expired.

(i) Credit for certain other taxes payable to other jurisdictions. (1) If, by the laws of any state other than this state, or by the action of any public official of such other state, an insurer organized or domiciled in this state, or the duly authorized agents thereof, shall be required to pay taxes for the privilege of doing business in such other state, which taxes are imposed or assessed because of amounts imposed upon and required to be paid by insurers organized or domiciled in such other state pursuant to section twenty-eight hundred seven-t of the public health law, then and in every case, to the extent such taxes are legally due to such other state, such insurer organized or domiciled in this state may claim a credit, as hereinafter provided, against the tax payable pursuant to this article of a sum not to exceed ninety per cent of such amount. Provided, such credit shall in no event be greater than the tax payable pursuant to this article during the taxable year with respect to which such taxes have been imposed or assessed by such other state. For purposes of this section, the term "taxes for the privilege of doing business" shall include, but shall not be limited to, a tax on or measured by income.

(2) A credit may be claimed for the amount computed as provided in paragraph one of this subdivision, on the return required pursuant to section fifteen hundred fifteen, against the tax imposed pursuant to this article for the taxable year in which such amount shall be paid. To the extent such credit shall exceed the amount payable pursuant to section fifteen hundred sixteen for the taxable year against which the credit is allowed, the difference between the amount allowed as a credit and the tax payable pursuant to section fifteen hundred sixteen shall be credited or refunded by the commissioner, without interest.

(3) The credit allowed pursuant to this subdivision shall be in

addition to the credits allowed pursuant to subdivisions (a), (b) and (c) of this section.

(4) The superintendent of financial services and the commissioner shall examine claims for credit or refund made under this subdivision. If the superintendent of financial services or the commissioner shall determine that any tax for which a credit shall have been claimed was not legally due to another state or that an error exists in the amount of credit shown on such return or in the amount claimed as a refund or refunded, the commissioner shall take appropriate action under this chapter for the assessment and collection of any tax resulting from the disallowance of a claim for credit made under this subdivision or to disallow any such claim for refund.

(5) Any taxpayer which commences an action or proceeding in any state or federal court to contest the validity of any assessment made against the taxpayer by another state pursuant to a statute similar to section one thousand one hundred twelve of the insurance law or any other statute or regulation of another state under which retaliatory taxes or other charges are imposed or assessed against such taxpayer shall give the commissioner and the superintendent of financial services written notice of the commencement of such action or proceeding within five days after such commencement.

(6) The commissioner shall report annually, on or before the first day of March, on the amount of credits claimed pursuant to this subdivision on returns filed during the preceding calendar year. Such report shall be provided to the director of the budget, the commissioner of health and the superintendent of financial services.

(7) In addition to any other requirements of this article, an insurer claiming a credit under this subdivision shall attach to the returns required pursuant to section fifteen hundred fifteen a computation identifying the credit attributable to taxes paid to other states because of the amounts imposed and required to be paid pursuant to section twenty-eight hundred seven-t of the public health law, which credit shall be further broken down to reflect amounts and taxable years to which the retaliatory taxes giving rise to the credit relate.

(j) Credit for employment of persons with disabilities. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for

employing within the state a qualified employee.

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

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

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

(3) Amount of credit. Except as provided in paragraph four of this subdivision, the amount of credit shall be thirty-five percent of the first six thousand dollars in qualified first-year wages earned by each qualified employee. "Qualified first-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employee, to services rendered during the one-year period beginning with the day the employee begins work for the taxpayer.

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

(5) Carryover. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by

paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

(k) Credit for certain investments in certified capital companies. (1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be equal to one hundred percent of an investment of certified capital in a certified capital company program made by the taxpayer pursuant to section eleven of this chapter.

(2) Ten percent of such credit shall be allowed in the taxable year to which such investment is allocated pursuant to subdivision (h) of section eleven of this chapter and in each of the nine following taxable years. In addition, in any taxable year subsequent to the taxable year for which such investment is so allocated, any amount carried forward under paragraphs three and four of this subdivision may be carried forward indefinitely until such credits are utilized.

(3) No credit allowable pursuant to this subdivision shall reduce the tax payable under this article to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not taken in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax

for such year or years.

(4) If for any taxable year the credit allowable under paragraph two of this subdivision exceeds such minimum tax for such taxable year, then the amount by which such credit exceeds such minimum tax liability shall be carried forward as a credit under paragraph two of this subdivision to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(5) Decertification of a certified capital company from a certified capital company program shall cause the disallowance and the recapture of the credit allowed under paragraph one of this subdivision, as follows:

(A) Decertification of a certified capital company from a certified capital company program within two years of its starting date prior to meeting the requirements of subparagraph (A) of paragraph one of subdivision (c) of section eleven of this chapter shall cause disallowance of one hundred percent of the credit allowed under paragraph one of this subdivision with respect to such certified capital company program and the recapture of any portion of such credit that was previously taken.

(B) Decertification of a certified capital company from a certified capital company program which, having met all requirements of subparagraph (A) of paragraph one of subdivision (c) of section eleven of this chapter, subsequently fails to meet the requirements for continued certification under the provisions of subparagraph (B) of such paragraph one, shall cause the disallowance of eighty-five percent of the credit allowed under paragraph one of this subdivision with respect to such certified capital company program and recapture of any portion of such credit in excess of fifteen percent that was previously taken.

(C) Decertification of a certified capital company from a certified capital company program which, having met all requirements of subparagraphs (A) and (B) of paragraph one of subdivision (c) of section eleven of this chapter, subsequently fails to meet the requirements for continued certification under the provisions of subparagraph (C) of such paragraph one, shall cause the disallowance of seventy percent of the credit allowed under paragraph one of this subdivision with respect to such certified capital company program and the recapture of any portion of such credit in excess of thirty percent that was previously taken.

(D) Decertification of a certified capital company from a certified capital company program pursuant to paragraph two of subdivision (e) of section eleven of this chapter, other than on the grounds of the failure of such certified capital company to meet the requirements of subparagraphs (A), (B) or (C) of paragraph one of subdivision (c) of such section, shall not cause the disallowance of any of the credits allowed under paragraph one of this subdivision with respect to such certified capital company program, nor the recapture of any portion of such credits that was previously taken.

(E) If, after twelve years after a certified capital company receives an investment of certified capital under certified capital company program four and any subsequent program, such certified capital company has failed to invest one hundred percent of its certified capital allocable to such certified capital company program in qualified investments, such certified capital company shall be required to pay to the department, for deposit in the general fund, an amount equal to two times the amount of net profits on qualified investments as required under paragraph five of subdivision (d) of section eleven of this chapter at such subsequent time when it has fully invested one hundred percent and has begun to make a distribution of its net profits; provided that such requirement shall not apply to a certified capital company in which at least fifty percent of the voting stock, capital, membership interests, or other beneficial ownership interests, as the case may be, are owned by an entity that is managed, directly or indirectly, by a non-profit corporation. This amount of payment to the department shall not be reduced by the amount set forth in paragraph six of subdivision (d) of section eleven of this chapter, and a certified capital company making a payment under this paragraph shall not be eligible to create a fund pursuant to such paragraph six of subdivision (d) of section eleven of this chapter for that particular certified capital company program.

(6) Revocation of certification from a certified capital company program pursuant to subdivision (f) of section eleven of this chapter, before the later of (i) the third anniversary of the certification date of the certified capital company or (ii) the date on which the certified capital company satisfies the requirements of subparagraph (C) of paragraph one of subdivision (c) of section eleven of this chapter,

shall cause disallowance of one hundred percent of the credit allowed under paragraph one of this subdivision with respect to such certified capital company program and the recapture of any portion of such credit that was previously taken.

(7) No credit shall be allowed in any tax year in which the taxpayer shall, individually or with or through one or more affiliates, be a managing general partner of or underwrite or control the direction of investments of a certified capital company for which the credit was allowed under paragraph one of this subdivision. This provision shall not preclude a certified investor, insurance company or any other party from exercising its legal rights and remedies (which may include interim management of a certified capital company) in the event that a certified capital company is in default of its statutory obligations or its contractual obligations to such certified investor, insurance company or other party or from monitoring the certified capital company to ensure its compliance with section eleven of this chapter or disallowing any investments that have not been approved by the superintendent pursuant to subparagraph (D) of paragraph one of subdivision (c) of such section eleven. For purposes of this paragraph, affiliate shall mean a business entity in which the taxpayer holds at least a ten percent beneficial interest.

(8) A certified investor allowed a credit against its state tax liability earned through an investment in a certified capital company shall not be required to pay any additional retaliatory tax levied pursuant to section eleven hundred twelve of the insurance law as a result of claiming such credit.

(9) A taxpayer is permitted to transfer or sell tax credits allowed under this subdivision, in whole or in part, to any affiliate within an affiliated group of taxpayers, who are subject to tax in this state under this article. Such transfer or sale shall not affect the time schedule for claiming the credit transferred or sold. Any credit recaptured shall be the liability of the taxpayer who actually claimed the credit. The claim of a transferee shall be permitted in the same manner and subject to the same provisions and limitations of section eleven of this chapter as applied to the taxpayer to whom the credit was originally allowed. For purposes of this paragraph, the term "affiliated group" shall have the same meaning as described in section fifteen

hundred four of the internal revenue code, without exclusion for a company listed under paragraph two of subsection (b) of section fifteen hundred four of the internal revenue code, except that the references to "at least eighty percent" in such section fifteen hundred four shall be read as "more than fifty percent". Whenever a taxpayer transfers or sells a tax credit pursuant to this paragraph, such taxpayer shall notify the department and the department of financial services of such transfer or sale within forty-five days.

(l) Credit for purchase of an automated external defibrillator. A taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of the credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable.

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

(2) In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(n) Low-income housing credit. (1) Allowance of credit. A taxpayer

shall be allowed a credit against the tax imposed by this article with respect to the ownership of eligible low-income buildings, computed as provided in section eighteen of this chapter.

(2) Application of credit. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

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

(2) Carryover. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of

section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

(q) Investment tax credit (ITC). (1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. Provided, however, a taxpayer shall not be allowed such credit provided by this subdivision unless (A) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or (B) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (C) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of subparagraph (C) of this paragraph the employment test will be based on the number of employees located in this state on the last day of the first taxable

year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. The amount of the credit shall be the percent provided for herein below of the investment credit base. The investment credit base is the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph two of this subdivision, less the amount of the nonqualified nonrecourse financing with respect to such property to the extent such financing would be excludible from the credit base pursuant to section 46(c)(8) of the Internal Revenue Code (treating such property as section thirty-eight property irrespective of whether or not it in fact constitutes section thirty-eight property). If, at the close of a taxable year following the taxable year in which such property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be treated as if it were the cost or other basis of property described in paragraph two of this subdivision acquired, constructed, reconstructed or erected during the year of the decrease in the amount of nonqualified nonrecourse financing. In the case of a combined return, the term investment credit base shall mean the sum of the investment credit base of each corporation included on such return. The percentage to be used to compute the credit allowed pursuant to this subdivision shall be five percent with respect to the first three hundred fifty million dollars of the investment credit base, and four percent with respect to the investment credit base in excess of three hundred fifty million dollars.

(2) A credit shall be allowed under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the Internal Revenue Code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the Internal

Revenue Code, have a situs in this state and are (A) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, or (B) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code. For purposes of subparagraphs (A) and (B) of this paragraph, property purchased by a taxpayer affiliated with a regulated broker, dealer or registered investment adviser is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer or registered investment adviser in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in subparagraphs (A) and (B) of this paragraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under either or both of such subparagraphs may be aggregated.

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

(4) Except as otherwise provided in this paragraph, the credit allowed

under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount fixed as a minimum tax by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit allowed for a taxable year may be carried over to the fifteen taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph seven of this subdivision may elect to treat the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding no interest shall be paid thereon.

(5) At the option of the taxpayer an eligible business facility for which a credit is allowed under subdivision (d) of this section may be treated as property (A) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, or (B) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code provided the property otherwise qualifies under paragraph two of this subdivision, in which event a credit shall not be allowed under subdivision (d) of this section.

(6) (A) With respect to property which is depreciable pursuant to

section one hundred sixty-seven of the Internal Revenue Code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subparagraph, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(B) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the Internal Revenue Code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(C) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the Internal Revenue Code, other than three-year property as defined in subsection (e) of

such section one hundred sixty-eight which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(D) With respect to any property to which section one hundred sixty-eight of the Internal Revenue Code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in a qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the Internal Revenue Code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the Internal Revenue Code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the Internal Revenue Code.

(E) The amount required to be added back pursuant to this paragraph shall be augmented by an amount equal to the product of such amount and the underpayment rate of interest (without regard to compounding), set by the commissioner pursuant to subsection (e) of section one thousand ninety-six of this chapter, in effect on the last day of the taxable

year.

(F) If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8) of the Internal Revenue Code) with respect to any property with respect to which the credit under this subdivision was limited based on attributable nonqualified nonrecourse financing, then an amount equal to the decrease in such credit which would have resulted from reducing, by the amount of such net increase, the cost or other basis taken into account with respect to such property must be added back in such taxable year. The amount of nonqualified nonrecourse financing shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than one year after the date such indebtedness was incurred.

(7) For purposes of paragraph four of this subdivision, a new business shall include any corporation, except a corporation which:

(A) over fifty percent of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned or controlled, either directly or indirectly, by a taxpayer subject to tax under this article; section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine; article nine-A or article thirty-two of this chapter; or

(B) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine; article nine-A or article thirty-two of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect of January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph four of this subdivision with respect to refunding of credit to new business would be evaded; or

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

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

(ii) The taxpayer's total employment number shall include all employees of the taxpayer employed full-time by the taxpayer in the state. The average total employment number for the taxpayer's recapture event taxable year and the two taxable years immediately preceding the recapture event taxable year shall be computed by determining the taxpayer's total employment number on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the

thirty-first day of December during the applicable taxable years, adding together the number of such individuals determined to be so employed on each of such dates and dividing the sum so obtained by the number of such dates occurring within such applicable taxable years. However, in the case of the taxable year which included September eleventh, two thousand one, the average total employment number for such taxable year shall be determined by using the total employment number on September first, two thousand one in lieu of September thirtieth, two thousand one and, if such taxable year included December thirty-first, two thousand one, by excluding the total employment number on December thirty-first, two thousand one.

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

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

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

this paragraph.

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable.

(t) Order of credits. Notwithstanding the succeeding sentences of this subdivision, the credits provided for in subdivisions (g) and (h) of this section shall be deducted before any other credits allowable under this article, and the credit provided for in such subdivision (g) shall be deducted after the credit provided for in such subdivision (h). After application of the first sentence of this subdivision, the credits allowable under this article which cannot be carried over and which are not refundable shall be deducted first. Credits allowable under this article which can be carried over, and carryovers of such credits, shall be deducted next, and among such credits, those whose carryover is of

limited duration shall be deducted before those whose carryover is of unlimited duration. Credits allowable under this article which are refundable shall be deducted last. Credits under subdivisions (g) and (h) of this section may not be deducted from the limitation on tax computed pursuant to subdivision (a) of section fifteen hundred five of this article.

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article. However, if the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred

eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(w) Environmental remediation insurance credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-three of this chapter, against the taxes imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article. However, if the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* (x) Security training tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article. However, if the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* NB There are 2 sb (x)'s

* (x) Credit for fuel cell electric generating equipment expenditures. (1) Allowance of credit. For taxable years beginning before January first, two thousand nine, a taxpayer shall be allowed a credit against

the tax imposed by this article, equal to its qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for in this subdivision shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

(2) Qualified fuel cell electric generating equipment expenditures.

(A) Qualified fuel cell electric generating equipment expenditures are the costs, incurred on or after July first, two thousand five, associated with the purchase of on-site electricity generation units utilizing proton exchange membrane fuel cells, providing a rated baseload capacity of no less than one kilowatt and no more than one hundred kilowatts of electricity, which are located in this state at the time the qualified fuel cell electric generating equipment is placed in service.

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

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

(D) The amount of any federal, state or local grant received by the taxpayer, which was used for the purchase and/or installation of such equipment and which was not included in the federal gross income of the taxpayer, shall not be included in the amount of such qualified expenditures.

(3) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

* NB There are 2 sb (x)'s

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

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

* NB There are 3 sb§ (y)'s

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for that year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

* NB There are 3 sb§ (y)'s

* (y) Credit for rehabilitation of historic properties. (1) (A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand thirty, a taxpayer, or a transferee of such a taxpayer as described in paragraph seven of this subdivision, shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure, and one hundred fifty percent of the amount of credit allowed the taxpayer with respect to a certified historic

structure that is a small project, under internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47, with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars. For taxable years beginning on or after January first, two thousand thirty, a taxpayer, or a transferee of such a taxpayer as described in paragraph seven of this subdivision, shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47 with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(B) If the taxpayer or transferee is a partner in a partnership, then the cap imposed in subparagraph (A) of this paragraph shall be applied at the entity level, so that the aggregate credit allowed to all the partners of such partnership in the taxable year does not exceed the credit cap that is applicable in that taxable year.

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

(3) If the taxpayer is allowed a credit pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subdivision and that credit pursuant to such section 47 is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subdivision in the taxable year the credit was claimed must be added back by the taxpayer or transferee in the same taxable year and in the same proportion as the federal recapture.

(4) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credits allowed under this

subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(5) To be eligible for the credit allowable under this subdivision, the rehabilitation project shall be in whole or in part located within a census tract which is identified as being at or below one hundred percent of the state median family income as calculated as of April first of each year using the most recent five year estimate from the American community survey published by the United States Census bureau. If there is a change in the most recent five year estimate, a census tract that qualified for eligibility under this program before information about the change was released will remain eligible for a credit under this subdivision for an additional two calendar years. The eligibility restrictions set forth in this paragraph shall not be applicable if:

(A) a qualified rehabilitation project is undertaken within a state park, state historic site, or other land owned by the state, that is under the jurisdiction of the office of parks, recreation and historic preservation; or

(B) a qualified rehabilitation project is undertaken for the provision of affordable housing and the taxpayer has entered into a regulatory agreement with any state or federal agency or authority, or any other government entity that is authorized to engage in the financing, construction or oversight of affordable housing within such entity's jurisdiction, and where such regulatory agreement sets forth affordability requirements applicable for a period of not less than thirty years and that is binding on all successors of the taxpayer.

(6) For purposes of this subdivision "small project" means qualified rehabilitation expenditures totaling two million five hundred thousand dollars or less.

(7)(A) A taxpayer allowed a credit pursuant to this subdivision may transfer the credit, in whole or in part, to another person or entity, who shall be referred to as the transferee, without regard to how any

tax credit authorized pursuant to section forty-seven of the internal revenue code with respect to a qualified rehabilitation project may be allocated and notwithstanding that such other person or entity owns no interest in the qualified rehabilitation project or in an entity with an ownership interest in the qualified rehabilitation project. A transferee may not transfer any credit, or portion thereof, acquired by transfer.

(B) A taxpayer seeking to transfer a credit allowed pursuant to this subdivision must enter into a transfer contract with the transferee. The transfer contract must specify:

(i) the building identification numbers for all buildings in the project;

(ii) the date each building was placed into service;

(iii) the schedule of years for which the transfer credit may be claimed and the amount of credit previously claimed;

(iv) the amount of consideration received by the taxpayer for the transfer credit; and

(v) the amount of credit being transferred.

(C) No transfer shall be effective unless the taxpayer allowed a credit pursuant to this subdivision and seeking to transfer the credit files a transfer application with the commissioner of parks, recreation and historic preservation prior to the transfer and such transfer application is approved. The transfer application shall include the name and federal identification numbers of the taxpayer and each proposed transferee, the amount of credit proposed to be transferred to each proposed transferee, a copy of the transfer contract, and such other information as the commissioner or the commissioner of parks, recreation and historic preservation may require. The commissioner of parks, recreation and historic preservation shall approve or deny each transfer application and, if an application is denied, shall issue a written determination to the taxpayer. If the transfer is approved, the commissioner of parks, recreation and historic preservation shall issue a transfer approval certificate that provides the name of the transferor and all transferees, the amount of credit being transferred and such other information as the commissioner of parks, recreation and historic preservation and the commissioner deem necessary. A copy of the transfer approval certificate must be attached to each transferee's tax return. The commissioner of parks, recreation and historic preservation, in

consultation with the commissioner, may establish such other procedures and standards deemed necessary for the transferability of credits allowed under this subdivision.

(D) The commissioner of parks, recreation and historic preservation shall forward copies of all transfer applications and attachments thereto and approval certificates to the commissioner within thirty days after the transfer is approved.

(E) A taxpayer allowed a credit pursuant to section forty-seven of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subdivision shall remain solely liable for all obligations and liabilities imposed on the taxpayer with respect to the credit allowed by this subdivision, none of which shall apply to a party to whom the credit has been subsequently transferred.

* NB There are 3 sb§ (y)'s

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

(2) Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. If, however, the amount of credit allowed under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided however, that no interest shall be paid thereon.

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year will not reduce the tax due for such year to less than the minimum tax fixed by this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the

tax to such amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

* NB Repealed December 31, 2026

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

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

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

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

* (dd) Employer-provided child care credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-four of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision shall not reduce the tax due for such year to be less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the taxpayer's tax to such amount, any amount of credit thus not deductible will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(3) Credit recapture. For provisions requiring recapture of credit, see section forty-four of this chapter.

* NB There are 2 sb (dd)'s

* (dd) Recovery tax credit. (1) Allowance of credit. A taxpayer that is a qualified employer pursuant to section 32.38 of the mental hygiene law that has received a certificate of tax credit from the commissioner of the office of alcoholism and substance abuse services shall be allowed a credit against the tax imposed by this article equal to the amount shown on such certificate of tax credit. A taxpayer that is a partner in a partnership or member of a limited liability company that has been certified by the commissioner of the office of alcoholism and substance abuse services as a qualified employer pursuant to section 32.38 of the mental hygiene law shall be allowed its pro rata share of the credit earned by the partnership or limited liability company.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of

tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(3) Tax return requirement. The taxpayer shall be required to attach to its tax return in the form prescribed by the commissioner, proof of receipt of its certificate of tax credit issued by the commissioner of the office of alcoholism and substance abuse services pursuant to section 32.38 of the mental hygiene law.

* NB There are 2 sb (dd)'s

(ee) Child care creation and expansion tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-eight of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision shall not reduce the tax due for such year to be less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article, whichever is applicable. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the taxpayer's tax to such amount, any amount of credit thus not deductible will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 1512. Exemptions. (a) This article shall not apply to:

(1) the government of the United States, or of any state or municipality thereof, or any instrumentality of any such government;

(2) any charitable, religious, missionary, educational or philanthropic non-stock corporation that would have been excepted from the classification of the business of insurance by section nine of the insurance law in effect immediately prior to January first, nineteen hundred forty, or any person, firm, corporation or association that would have been exempted from the provisions of article six of such insurance law by section two hundred fourteen thereof, or exempted from

the provisions of article seven of such insurance law by section two hundred forty-five thereof;

(3) any retirement system or pension fund which does exclusively an annuity business;

(4) any non-profit medical expense indemnity or hospital service corporation organized under article forty-three of the insurance law;

(5) any incorporated or unincorporated fraternal benefit society, or in the event of (i) the conversion of any such society into a mutual life insurance company or (ii) the reinsurance of the business of such society by the superintendent of financial services pursuant to an order of liquidation, the premiums payable under insurance benefit certificates issued by such society prior to the conversion or reinsurance;

(6) any corporation for the insurance of domestic animals on the cooperative or assessment plan, organized under the laws of this state; and

(7) a town or county cooperative insurance corporation as heretofore contemplated by section one hundred eighty-seven of this chapter in effect immediately prior to January first, nineteen hundred seventy-four.

(8) any not-for-profit voluntary employees' beneficiary association which is exempt from federal income tax pursuant to section 501 (c) (9) of the United States internal revenue code, the members of which are employees or the beneficiaries or dependents of the employees of a single employer or an affiliated group of employers. For purposes of this paragraph, an affiliated group shall mean one or more chains of corporations connected through stock ownership with a common parent if (i) eighty percent or more of the voting stock of each corporation other than the common parent is owned directly by one or more of the other corporations and (ii) eighty percent or more of the voting stock of at least one of the corporations other than the common parent is owned directly by the common parent.

(9) any nonprofit property/casualty insurance company organized pursuant to section six thousand seven hundred three of the insurance law.

(10) any nonprofit health maintenance organization required to obtain a certificate of authority under article forty-four of the public health

law.

(b) The tax imposed by section fifteen hundred ten shall not apply to:

(1) any insurance on property or risks located or resident outside the state of New York written by a fire or life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding and strengthening charitable, religious, missionary, educational or philanthropic institutions, by issuing insurance and annuity contracts only to or for the benefit of such institutions, to individuals engaged in the services of such institutions, and to members of the immediate families of such individuals;

(2) any insurance on risks resident outside of the state of New York written by a life insurance company which has been organized for the purpose of establishing a non-profit voluntary employees beneficiary association to provide life, sick, accident or other benefits to eligible employees or their beneficiaries, is operated exclusively for said purposes and without profit, direct or indirect, to any private shareholder or individual, and is duly exempt from income taxation pursuant to the United States internal revenue code; or

(3) except in the case of foreign and alien title insurance corporations, premiums, other than those for accident and health insurance, written, procured or received in this state for insurance on property or risks located or resident outside the United States.

(c) The taxes imposed by sections fifteen hundred one, fifteen hundred two-a, and fifteen hundred ten of this article shall not apply to any corporation, association, joint stock company or association, person, society, aggregation or partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law. However, such corporations, associations, joint stock companies or associations, persons, societies, aggregations or partnerships must compute an allocated entire net income pursuant to sections fifteen hundred three and fifteen hundred four of this article and transmit a return to the tax commission pursuant to section fifteen hundred fifteen of this article.

§ 1513. Declarations of estimated tax. (a) Requirements of declaration.--Every taxpayer subject to the taxes imposed under this article shall make a declaration of its estimated tax for the current taxable year, containing such information as the commissioner of taxation and finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars. If a taxpayer is subject to the tax surcharge imposed by section fifteen hundred five-a and such taxpayer's estimated tax under this article can (without regard to section fifteen hundred five-a thereof) reasonably be expected to exceed one thousand dollars, such taxpayer shall also make a declaration of its estimated tax surcharge for the current taxable year.

(b) Definition of estimated tax and estimated tax surcharge. The terms "estimated tax" and "estimated tax surcharge" mean the amounts which the taxpayer estimates to be the taxes imposed by sections fifteen hundred one, fifteen hundred two-a and fifteen hundred ten of this article or the tax surcharge imposed by section fifteen hundred five-a of this article, respectively, for the current taxable year, less the sum of any credits which it estimates to be allowable against such taxes or tax surcharge, respectively.

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

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

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

(d) Amendments of declaration.--A taxpayer may amend a declaration of estimated tax or a declaration of estimated tax surcharge under regulations prescribed by the commissioner of taxation and finance.

(e) Return as declaration. If, on or before February fifteenth of the succeeding year in the case of a taxpayer whose taxable year is a calendar year, a taxpayer files its return for the year for which the

declaration is required, and pays therewith the balance, if any, of the full amount of the tax or tax surcharge shown to be due on the return

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

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

(f) Short taxable period. If the taxable period for which a tax or tax surcharge is imposed under this article is less than twelve months, every taxpayer required to make a declaration of estimated tax or a declaration of estimated tax surcharge for such taxable period shall make such declaration in accordance with rules of the commissioner of taxation and finance.

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

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

§ 1514. Payments of estimated tax. (a) First installment of estimated tax. (1) Except as otherwise provided in paragraph two of this subdivision, for taxable years beginning on or after January first, nineteen hundred seventy-six, every taxpayer subject to tax under this article must pay in each year an amount equal to (i) twenty-five percent of the tax imposed under this article for the second preceding taxable year if the second preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) forty percent of the tax imposed under this article for the second

preceding taxable year if the second preceding year's tax exceeded one hundred thousand dollars. If the second preceding year's tax exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section fifteen hundred five-a of this article, the taxpayer must also pay an amount equal to (i) twenty-five percent of the tax surcharge imposed under section fifteen hundred five-a of this article for the second preceding taxable year if the second preceding year's tax was equal to or less than one hundred thousand dollars, or (ii) forty percent of the tax surcharge imposed for the second preceding taxable year if the second preceding year's tax exceeded one hundred thousand dollars.

(2) For taxable years beginning on or after January first, nineteen hundred ninety-nine, every taxpayer subject to tax under paragraph one of subdivision (b) of section fifteen hundred ten of this article shall pay in each such year an amount equal to forty percent of the tax imposed under such article for the second preceding taxable year, if such second preceding year's tax exceeded one thousand dollars. If such second preceding year's tax exceeded one thousand dollars and such taxpayer is subject to the tax surcharge imposed by section fifteen hundred five-a of this article, such taxpayer shall also pay an amount equal to forty percent of the tax surcharge imposed under section fifteen hundred five-a of this article for the second preceding taxable year.

(3) Such amount or amounts described in paragraphs one and two of this subdivision shall be paid with the return required to be filed with respect to such tax or tax surcharge for the preceding taxable year or with an application for extension of the time for filing such return, for taxable years beginning before January first, two thousand sixteen, and shall be paid on or before the fifteenth day of the third month of each taxable year, for taxable years beginning on or after January first, two thousand sixteen.

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

(1) If the declaration is filed on or before June fifteenth, the

estimated tax or estimated tax surcharge shown thereon, after applying thereto the amount, if any, paid during the same taxable year pursuant to subdivision (a) of this section, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following September fifteenth, and one on the following December fifteenth.

(2) If the declaration is filed after June fifteenth and not after September fifteenth of such taxable year, and is not required to be filed on or before June fifteenth of such year the estimated tax or estimated tax surcharge shown on such declaration, after applying thereto the amounts, if any, paid during the same taxable year pursuant to subdivision (a) of this section, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

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

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

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

(d) (1) Application of first installments based on second preceding year's tax. Any amount paid pursuant to subdivision (a) shall be applied as a first installment against the estimated tax or estimated tax surcharge, respectively, of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section fifteen hundred thirteen, or if no declaration is filed pursuant to such section, any such amount shall be considered a payment on account of the tax or tax surcharge shown on the return required to be filed by the taxpayer for such taxable year.

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

(e) Interest on certain installments based on the second preceding year's tax. Notwithstanding the provisions of section one thousand eighty-eight of this chapter or section sixteen of the state finance law, if an amount paid pursuant to subdivision (a) of this section exceeds the tax or tax surcharge, respectively, shown on the return required to be filed by the taxpayer for the taxable year during which such amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to subdivision (a) exceeds such tax or tax surcharge, at the overpayment rate set by the commissioner of taxation and finance pursuant to subdivision (e) of section one thousand ninety-six or, if no rate is set, at the rate of six percent per annum, from the date of payment of the amount so paid pursuant to such subdivision (a) to the fifteenth day of the third month following the close of the taxable year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar or if such interest becomes payable solely because of a loss described in paragraph four of subdivision (b) of section fifteen hundred three.

(f) The second preceding year's tax defined. As used in this section,

"the second preceding year's tax" means, for taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article, the taxes imposed upon the taxpayer by sections fifteen hundred one and fifteen hundred ten of this article from the second preceding taxable year or as otherwise determined by subdivision (b) of section fifteen hundred five of this article, and for taxpayers subject to tax under section fifteen hundred two-a of this article, the tax imposed upon the taxpayer by such section fifteen hundred two-a of this article from the second preceding year.

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

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

(i) Extension of time. The commissioner of taxation and finance may grant a reasonable extension of time, not to exceed six months, for the payment of any installment of estimated tax or estimated tax surcharge required pursuant to this section, on such terms and conditions as he may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided, however, that interest at the underpayment rate set by the commissioner pursuant to subdivision (e) of section one thousand ninety-six or, if no rate is set, at the rate of six percent per annum for the period of the extension, shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

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

§ 1515. Returns. (a) Every taxpayer and every other foreign and alien insurance corporation having an employee, including any officer, in this state or having an agent or representative in this state, shall annually, on or before the fifteenth day of the third month following

the close of its taxable year, for taxable years beginning before January first, two thousand sixteen, and on or before the fifteenth day of the fourth month following the close of its taxable year, for taxable years beginning on or after January first, two thousand sixteen, transmit to the commissioner a return in a form prescribed by the commissioner setting forth such information as the commissioner may prescribe and every taxpayer which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the commissioner a return on the date of such cessation or at such other time as the commissioner may require covering each year or period for which no return was theretofore filed. A copy of each return required under this subdivision shall also be transmitted to the superintendent of financial services at or before the times specified for filing such returns with the commissioner.

(b) Every taxpayer shall also transmit such other returns and such facts and information as the tax commission may require in the administration of this article.

(c) The tax commission may grant a reasonable extension of time for filing returns whenever good cause exists. An automatic extension of six months for the filing of its annual return shall be allowed any taxpayer, if within the time prescribed by subdivision (a), such taxpayer files with the tax commission an application for extension in such form as said commission may prescribe and pays on or before the date of such filing the amount properly estimated as its tax.

(d) Every return shall have annexed thereto a certification by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the corporation.

(e) Report of changed or corrected federal income or final determination of refund or credit of retaliatory taxes or other charges.-- (1) If the amount of the life insurance company taxable income (which shall include, in the case of a stock life insurance company which has an existing policyholders surplus account, the amount of direct and indirect distributions during the taxable year to

shareholders from such account), taxable income of a partnership or taxable income, as the case may be, or alternative minimum taxable income for any year of any taxpayer as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, such taxpayer shall report such change or corrected taxable income or alternative minimum taxable income within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this article for such year) after the final determination of such change or correction or as required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Provided, however, if the taxpayer is a direct or indirect partner of a partnership required to report adjustments in accordance with section six hundred fifty-nine-a of this chapter, such taxpayer shall also report such adjustments in accordance with section six hundred fifty-nine-a of this chapter. Any taxpayer filing an amended return with such department shall also file within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this article for such year) thereafter an amended return with the commissioner which shall contain such information as the commissioner shall require. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code or upon an operations loss carryback pursuant to section eight hundred ten of the internal revenue code, shall be treated as a final determination for purposes of this subdivision.

(2) If a taxpayer has paid taxes to another state pursuant to a statute similar to section one thousand one hundred twelve of the insurance law or any other statute or regulation of another state under which retaliatory taxes or other charges were imposed or assessed, for which taxes or charges paid the taxpayer has been allowed a credit pursuant to subdivision (c) of section fifteen hundred eleven of this article, and thereafter such taxes or charges are adjudged by a court of competent jurisdiction or other competent authority to have been erroneously paid or illegally or unconstitutionally imposed and, after exhaustion of all further judicial review there is a final determination that a refund or credit is due the taxpayer, such taxpayer shall report

such final determination, along with the amount refunded or credited or to be refunded or credited, within ninety days of its issuance or as required by the tax commission.

(f) (1) Any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, (hereinafter referred to in this paragraph as "related corporations"), shall make a combined return with any related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price for such intercorporate transactions. It is not necessary that there be substantial intercorporate transactions between any one corporation and every other related corporation. It is necessary, however, that there be substantial intercorporate transactions between the taxpayer and a related corporation or collectively, a group of such related corporations. The return shall set forth such information as the commissioner may require.

(2) In determining whether there are substantial intercorporate transactions, the commissioner shall consider and evaluate all activities and transactions of the taxpayer and its related corporations. Activities and transactions that will be considered include, but are not limited to: (i) manufacturing, acquiring goods or property, or performing services, for related corporations; (ii) selling goods acquired from related corporations; (iii) financing sales of related corporations; (iv) performing related customer services using common facilities and employees for related corporations; (v) selling policies or contracts of insurance for related corporations; (vi) reinsuring risks for related corporations; (vii) collecting premiums or other consideration for any policy or contract of insurance for related corporations; (viii) incurring expenses that benefit, directly or indirectly, one or more related corporations and (ix) transferring assets, including such assets as accounts receivable, patents or trademarks from one or more related corporations.

(3) Except as provided in paragraph one of this subdivision, no

combined return covering any corporation shall be required unless the commissioner deems such return necessary because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision (g) of this section, in order properly to reflect the tax liability under this article.

(4)(i) For purposes of this paragraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under section fifteen hundred one of this article or article nine-A of this chapter or required to be included in a combined return or report under this article or article nine-A of this chapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(ii) A captive REIT or a captive RIC must be included in a combined return with the corporation that directly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC if that corporation is a life insurance corporation and is subject to tax or required to be included in a combined return under this article.

(iii) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a life insurance corporation that is subject to tax or required to be included in a combined return under this article, and the closest controlling stockholder of the captive REIT or captive RIC is a life insurance corporation that is subject to tax or required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined return with the closest controlling stockholder under this article.

(iv) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in paragraph two of subsection (i) of section eight hundred fifty-six of the internal revenue code) and the captive REIT is required to be included in a combined return under subparagraphs (ii) or (iii) of this paragraph, then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT that owns the stock of the qualified REIT subsidiary.

(v) If a captive REIT or a captive RIC is required under this

paragraph to be included in a combined return with another corporation, and that other corporation is required to be included in a combined return with another corporation under this subdivision, then the captive REIT or the captive RIC must be included in that combined return with the other corporation.

(5)(i) In the case of a combined return, the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the return, including any captive REIT or captive RIC. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated. No taxpayer subject to the tax imposed by section fifteen hundred two-a or section fifteen hundred two-b of this article may be required or permitted to be included in a combined return.

(ii) In the case of a captive REIT required under this subdivision to be included in a combined return, "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of that code, subject to the modifications required by section fifteen hundred three of this article. In the case of a captive RIC required under this subdivision to be included in a combined return, "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of that code, subject to the modifications required by section fifteen hundred three of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall not be allowed. The term "affiliated group"

means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

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

§ 1516. Payment of tax. (a) To the extent the tax imposed by this article shall not have been previously paid pursuant to section fifteen hundred fourteen,

(1) each such tax, or the balance thereof, shall be payable to the tax commission in full at the time the taxpayer's return is required to be filed, and

(2) each such tax, or the balance thereof, imposed on any taxpayer which ceased to exercise its franchise or to be subject to the tax imposed by this article shall be payable to the tax commission at the

time the return is required to be filed, provided each such tax of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other taxes of any such taxpayer, which pursuant to the foregoing provisions of this subdivision would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time.

(b) If the taxpayer, within the time prescribed by subdivision (c) of section fifteen hundred fifteen, shall have applied for an automatic extension of time to file its annual return and shall have paid to the commissioner of taxation and finance on or before the date such application is filed an amount properly estimated as provided by said subdivision, the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner pursuant to subsection (e) of section one thousand ninety-six or, if no rate is set, at the rate of six percent per annum upon the amount by which the tax, or portion thereof payable on or before the date the return was required to be filed, exceeds the amount so paid. For the purposes of the preceding sentence,

(1) an amount so paid shall be deemed properly estimated if it is either (i) not less than ninety percent of the tax as finally determined, or (ii) not less than the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

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

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

§ 1517. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the tax commission under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

§ 1518. Secrecy required of officials; penalty for violation. (a)

Except in accordance with the proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of taxation and finance, the superintendent of financial services, any officer or employee of the department of taxation and finance, or the department of financial services or any person who, pursuant to this section, is permitted to inspect any return, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return filed pursuant to this article, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any return required under this article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state or the commissioner of taxation and finance in any action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner of taxation and finance is a party or a claimant or on behalf of any party in an action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of and may admit in evidence so much of said returns or the fact shown thereby as are pertinent to the action or proceeding and no more. The commissioner of taxation and finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing provided for in section one thousand eighty-nine of this chapter. Notwithstanding any provisions of this section, the commissioner of taxation and finance may permit the superintendent of financial services or his authorized representative to inspect the returns filed with the commissioner of taxation and finance under this article, or may furnish to such superintendent or his authorized representative an abstract of any return or supply him with information concerning an item contained in any return, or disclosed by an investigation of tax liability under this article. Nothing herein shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative of a certified copy of any return filed in connection with its tax nor to prohibit the

publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the attorney-general or other legal representatives of the state of the return of any taxpayer which shall bring action to set aside or review the tax based thereon, or against which an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or the attorney-general or has been instituted; or the inspection of the returns of any taxpayer by the comptroller or duly designated officer or employee of the state department of audit and control for purposes of the audit of a refund of any tax paid by such taxpayer under this article, or the disclosing to a state agency, pursuant to section one hundred seventy-one-f of this chapter, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a past-due legally enforceable debt owed to such agency and of the name and identification number of the taxpayer who made such overpayment, or the disclosing to the commissioner of finance of the city of New York, pursuant to section one hundred seventy-one-1 of this chapter, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a city of New York tax warrant judgment debt and of the name and identification number of the taxpayer who made such overpayment. The provisions of this section shall not be construed to prohibit or limit the superintendent of financial services from divulging or making known any information pursuant to the authority of the insurance law. Returns shall be preserved for three years and thereafter until the commissioner of taxation and finance orders them to be destroyed.

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

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

(c) Notwithstanding any provisions of this section, the tax commission may permit the secretary of the treasury of the United States or his delegates, or the proper officer of any other state charged with tax administration, or the authorized representative of either of such officers, to inspect the returns filed under this article, or may

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

(d) Notwithstanding the provisions of subdivision (a) of this section, the tax commission may permit the officer charged with the administration of a tax on or measured by income imposed by any city of the state of New York, or the authorized representative of such officer, to inspect the returns filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply information concerning an item contained in any such return, or disclosed by an investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or his delegates and the legal representative of such

city such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his delegates or by such legal representative of such city, provided the local law of such city grants substantially similar powers to the city officer charged with the administration of the city income tax or his delegates. Where the commissioner of taxation and finance has so authorized use of returns or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other tax information.

(e) Notwithstanding the provisions of subdivision (a) of this section, the tax commission, in its discretion, may require or permit any or all persons liable for any tax imposed by this article, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this article to banks, banking houses or trust companies designated by the tax commission and to file declarations of estimated tax, applications for automatic extensions of time to file returns, and returns with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section fifteen hundred seventeen.

(f) Notwithstanding the provisions of subdivision (a) of this section, in the case where a taxpayer which is an attorney-in-fact has claimed a deduction pursuant to subparagraph fifteen of paragraph (a) of subdivision nine of section two hundred eight of this chapter, the commissioner shall have the authority to release to such attorney-in-fact any information with respect to the entire net income or income allocation percentage of the interinsurer or reciprocal insurer, or any member of a combined group that includes the interinsurer or reciprocal insurer, which is the basis for the denial in whole or in part of the deduction claimed by such attorney-in-fact.

(g) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may disclose to a taxpayer or a taxpayer's related

member, as defined in paragraph fourteen of subdivision (b) of section fifteen hundred three of this article, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner under this chapter.

(h) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns filed specified in such request that were under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any

individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 1519. Procedural provisions. The provisions of article twenty-seven of this chapter shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article.

§ 1520. Tax surcharge. (a) In addition to the tax imposed under sections fifteen hundred one and fifteen hundred ten of this article, there is hereby imposed, (1) for taxable years ending after June thirtieth, nineteen hundred eighty-nine and before July first, nineteen hundred ninety a tax surcharge at the rate of two and one-half percent of the tax imposed pursuant to such sections fifteen hundred one and fifteen hundred ten of this article, as limited by section fifteen hundred five of this article, before deduction of any credits against

tax otherwise allowable under this article for all or any part of such taxable years, (2) for taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four, and until such rate is superseded, a tax surcharge at the rate of fifteen percent of the tax imposed pursuant to such sections fifteen hundred one and fifteen hundred ten of this article, as limited by section fifteen hundred five of this article, after deduction of any credits against tax otherwise allowable under this article, (3) for taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five, and until such rate is superseded, a tax surcharge at the rate of ten percent of the tax imposed pursuant to such sections fifteen hundred one and fifteen hundred ten of this article, as limited by section fifteen hundred five of this article, after deduction of any credits against tax otherwise allowable under this article, (4) for taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six, and until such rate is superseded, a tax surcharge at the rate of five percent of the tax imposed pursuant to such sections fifteen hundred one and fifteen hundred ten of this article, as limited by section fifteen hundred five of this article, after deduction of any credits against tax otherwise allowable under this article, and (5) for taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, a tax surcharge at the rate of zero percent of the tax imposed pursuant to such sections fifteen hundred one and fifteen hundred ten of this article, as limited by section fifteen hundred five of this article, after deduction of any credits against tax otherwise allowable under this article. However, the tax surcharge imposed by this section at the rate of two and one-half percent shall not be imposed upon any taxpayer for more than twelve months, the tax surcharge imposed under this section at the rate of fifteen percent shall not be imposed on any taxpayer for more than forty-eight months, and the tax surcharges imposed by this section at the rates of ten percent, five percent and zero percent shall not, respectively, be imposed upon any taxpayer for more than twelve months, and the commissioner shall prescribe by regulation or instructions a method of proration designed to effectuate such result. The limitation on tax provided for in section fifteen hundred five of this article

shall not be applicable to the tax surcharge imposed by this section. The credits against tax otherwise allowable under section fifteen hundred eleven of this article shall not be allowed as a credit against the tax surcharge imposed by this section. A taxpayer which has made the election provided for in section fifteen hundred two-a of this article shall nevertheless compute its tax under this section as if it computed its taxes pursuant to the provisions of sections fifteen hundred two and fifteen hundred ten of this article.

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

(2) Except as otherwise provided in this section, all of the provisions of this article, except for sections fifteen hundred five, fifteen hundred five-A and fifteen hundred eleven, presently applicable are applicable to the tax surcharge imposed by this section with such modifications as may be necessary to adapt such language to the tax surcharge imposed by this section. Such provisions shall apply with the

same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax surcharge imposed by this section and to that end a reference in this article to the tax imposed by sections fifteen hundred one and fifteen hundred ten of this article shall be read as a reference to the tax surcharge imposed by this section, and to the sum of such tax and such tax surcharge in the case of sections fifteen hundred thirteen and fifteen hundred fourteen of this article and such other provisions requiring such reading in order to effectuate the purposes of this provision, unless a different meaning is clearly required.

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

(d) Insofar as subdivision (a) of this section establishes a rate of fifteen percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four and until such rate is superseded, a rate of ten percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five and until such rate is superseded, a rate of five percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six and until such rate is superseded, and a rate of zero percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, the transition from such rate of fifteen percent to such rate of ten percent, from such rate of ten percent to such rate of five percent, and from such rate of five percent to such rate of zero percent, shall be deemed to occur, respectively, on the first day of the seventh month of each of such taxable years, with the result that for purposes of implementation of such changes in rates, and notwithstanding such subdivision (a), there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five, including taxable years of fewer than twelve months, a tax surcharge at the rate of twelve and one-half percent;

there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six, including taxable years of fewer than twelve months, a tax surcharge at the rate of seven and one-half percent; and there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, including taxable years of fewer than twelve months, a tax surcharge at the rate of two and one-half percent. In addition, for purposes of implementation of all the provisions of this section references to ten percent shall be read as references to twelve and one-half percent, references to five percent shall be read as references to seven and one-half percent and references to zero percent shall be read as references to two and one-half percent.

ARTICLE 33-A

TAX ON INDEPENDENTLY PROCURED INSURANCE

Section 1550. General definitions.

1551. Imposition of tax.

1552. Allocation.

1553. Exemptions.

1554. Returns and payment.

1555. Secrecy required of officials; penalty for violation.

1556. Procedural provisions.

1557. Deposit and disposition of revenue.

§ 1550. General definitions. The following words, as used in this article, shall have the meanings hereinafter set forth:

(a) The term "person" means an individual, corporation, partnership, limited liability company, society, association, joint stock company, estate, receiver, trustee, assignee, referee and any other person acting in a fiduciary capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) The term "premium" includes all amounts paid as consideration for insurance contracts and shall include premium deposits, assessments, policy fees, membership fees, and every other compensation for such

contract. The term "premium" includes all such amounts paid irrespective of whether such amounts are deductible for federal income tax purposes.

(c) The term "taxable insurance contract" means a contract of insurance of the kind described in subsection (a) of section two thousand one hundred five of the insurance law.

(d) The term "home state" means:

(1) In general. Except as provided in paragraphs two and three of this subdivision, the term "home state" means, with respect to an insured:

(A) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence;

(B) if one hundred percent of the insured risk is located out of the state referred to in subparagraph (A) of this paragraph, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated;

(C) if more than one insured from an affiliated group, as defined in section two thousand one hundred one of the insurance law, are named insureds on a single insurance contract, the home state of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract; or

(D) in the case of a group policy:

(i) if the group policyholder pays one hundred percent of the premium from its own funds, the home state, as determined pursuant to subparagraph (A) of this paragraph, of the group policyholder; or

(ii) if the group policyholder does not pay one hundred percent of the premium from its own funds, the home state, as determined pursuant to subparagraph (A) of this paragraph, of the group member;

(2) "Principal place of business" means, with respect to determining the home state of the insured, the state where:

(A) the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities; or

(B) if the insured's high-level officers direct, control and coordinate the business activities in more than one state, or if the insured's principal place of business is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(3) "Principal residence" means, with respect to determining the home state of the insured, the state where:

(a) the insured resides for the greatest number of days during a calendar year; or

(b) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

§ 1551. Imposition of tax. There is hereby imposed on any person whose home state is New York and who purchases or renews a taxable insurance contract from an insurer not authorized to transact business in this state under a certificate of authority from the superintendent of financial services a tax at the rate of three and six-tenths percent of the premiums paid or to be paid, less returns thereon, for such insurance. Nothing in this article modifies or abrogates any provision of the insurance law.

§ 1552. Allocation. Where the taxable insurance contract covers risks located or resident both within and without this state and the taxpayer's home state is New York, one hundred percent of premiums shall be allocable to this state.

§ 1553. Exemptions. This article shall not apply to:

(a) the government of the United States or any instrumentality thereof;

(b) the state of New York or any political subdivision, as such term is defined for purposes of section one hundred three of the internal revenue code, thereof;

(c) the United Nations or any other international organization of which the United States is a member;

(d) any foreign government;

(e) any taxable insurance contract procured through a New York licensed excess line broker in accordance with section two thousand one hundred eighteen of the insurance law; and

(f) any taxable insurance contract of the type described in subsections (b), (c) and (d) of section two thousand one hundred seventeen of the insurance law.

§ 1554. Returns and payment. (a) Every person shall file a return with the commissioner of taxation and finance, in a form prescribed by the commissioner of taxation and finance, within sixty days of the end of the calendar quarter during which a taxable insurance contract took effect or was renewed. Such return shall set forth such information as the commissioner of taxation and finance may prescribe. The commissioner of taxation and finance may grant a reasonable extension of time for filing such returns.

(b) Every return filed by a corporation, partnership, limited liability company or association shall have annexed thereto a certification made by any person duly authorized so to act on behalf of such corporation, partnership, limited liability company or association that the statements contained therein are true. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the corporation, partnership, limited liability company or association. Blank forms of returns shall be furnished by the commissioner of taxation and finance, on application, but failure to secure such a form shall not release any person from the obligation of making any return required by this article.

(c) An action may be brought at any time by the attorney general at the instance of the commissioner of taxation and finance, in the name of the state, to compel the filing of returns due under this article.

(d) The tax shall be payable to the commissioner of taxation and finance in full at the time that the return is required to be filed. The commissioner of taxation and finance may grant a reasonable extension of time for payment of tax under such terms and conditions as he deems just and proper.

§ 1555. Secrecy required of officials; penalty for violation. (a) Except in accordance with the proper judicial order or as otherwise

provided by law, it shall be unlawful for the commissioner of taxation and finance, the superintendent of financial services, any officer or employee of the department of taxation and finance, or the department of financial services or any person who, pursuant to this section, is permitted to inspect any return, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return filed pursuant to this article, to divulge or make known in any manner any particulars set forth or disclosed in any return required under this article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state or the commissioner of taxation and finance in any action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner of taxation and finance is a party or a claimant or on behalf of any party in an action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of and may admit in evidence so much of said returns or the facts shown thereby as are pertinent to the action or proceeding and no more. The commissioner of taxation and finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing provided for in section one thousand eighty-nine of this chapter. Notwithstanding any provisions of this section, the commissioner of taxation and finance may permit the superintendent of financial services or his authorized representative to inspect the returns filed with such commissioner under this article, or may furnish to such superintendent or his authorized representative an abstract of any return or supply him with information concerning an item contained in any return, or disclosed by an investigation of tax liability under this article. Nothing herein shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative of a certified copy of any return filed in connection with its tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the attorney general or other

legal representatives of the state of the return of any taxpayer which shall bring action to set aside or review the tax based thereon, or against which an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or the attorney general or has been instituted; or the inspection of the returns of any taxpayer by the comptroller or duly designated officer or employee of the state department of audit and control for purposes of the audit of a refund of any tax paid by such taxpayer under this article. The provisions of this section shall not be construed to prohibit or limit the superintendent of financial services from divulging or making known any information pursuant to the authority of the insurance law and shall not be construed to prohibit the attorney general or superintendent of financial services or any officer or employee of the department of law or the department of financial services from using information derived independently of any return filed under this article in any action or proceeding under the insurance law. Returns shall be preserved for three years and thereafter until the commissioner of taxation and finance orders them to be destroyed.

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

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

(c) Notwithstanding any provisions of this section, the commissioner of taxation and finance may permit the secretary of the treasury of the United States or his delegates, or the proper officer of any other state charged with tax administration, or the authorized representative of either of such officers, to inspect the returns filed under this article, or may furnish to such officer or his authorized representative an abstract of any return or supply him with information concerning an item contained in any return, or disclosed by an investigation of tax liability under this article but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commissioner of taxation and finance or officer of this state charged with the

administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the secretary of the treasury of the United States or his delegates such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury or his delegates provided the laws of the United States grant substantially similar powers to the secretary of the treasury or his delegates. Where the commissioner of taxation and finance has so authorized use of returns or other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other tax information.

(d) Notwithstanding the provisions of subdivision (a) of this section, the commissioner of taxation and finance may permit the officer charged with the administration of a tax on or measured by income imposed by any city of the state of New York, or the authorized representative of such officer, to inspect the returns filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply information concerning an item contained in any such return, or disclosed by an investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the local laws of such city grant substantially similar privileges to the commissioner of taxation and finance or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or his delegates and the legal representative of such city such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his delegates or by such legal representative of such city, provided the local law of such city grants substantially similar powers to the city

officer charged with the administration of the city income tax or his delegates. Where the commissioner of taxation and finance has so authorized use of returns or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other tax information.

(e) Notwithstanding the provisions of subdivision (a) of this section, the commissioner of taxation and finance, in his discretion, may require or permit any or all persons liable for any tax imposed by this article, to make payment of any tax, penalty or interest imposed by this article to banks, banking houses or trust companies designated by the commissioner of taxation and finance and to file applications for extensions of time to file returns, and returns with such banks, banking houses or trust companies as agents of the commissioner of taxation and finance, in lieu of making any such payment directly to the commissioner of taxation and finance. However, the commissioner of taxation and finance shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section fifteen hundred fifty-seven of this article.

(f) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns filed specified in such request that were under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of

such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to furnishing any return, the commissioner shall redact any copy of a federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 1556. Procedural provisions. The provisions of article twenty-seven of this chapter shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this

article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article.

§ 1557. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the commissioner of taxation and finance under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

ARTICLE 33-B

TAX ON REAL ESTATE TRANSFERS IN TOWNS

- Section 1560. Definitions.
- 1561. Imposition of tax.
 - 1562. Payment of tax.
 - 1563. Liability for tax.
 - 1564. Exemptions.
 - 1565. Credit.
 - 1566. Cooperative housing corporation transfers.
 - 1567. Designation of agents.
 - 1568. Liability of recording officer.
 - 1568-a. Refunds.
 - 1569. Deposit and disposition of revenue.
 - 1570. Judicial review.
 - 1571. Apportionment.
 - 1572. Miscellaneous.
 - 1573. Returns to be confidential.

§ 1560. Definitions. When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a

fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within any designated community. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the

sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition

of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Seller" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "seller" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Buyer" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section six-s of the general municipal law.

10. "Recording officer" means the county clerk where the real property is located except in a county having a register, where it means the register of the county.

11. "Designated community" means any town or city within the Hudson Valley counties of Putnam, Ulster, or Westchester.

12. "Treasurer" means the county treasurer.

13. "Governing body" means the town board of a town; or the board of aldermen, common council, council, or commission of a city.

14. "Residential real property" means property which satisfies at least one of the following conditions:

(a) the property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a one, two or three family home or a rural residence; or

(b) the transfer report form indicates that the property is one, two or three family residential property that has been newly constructed on vacant land; or

(c) the transfer report form indicates that the property is a residential condominium.

15. "Tax" means the real estate transfer tax payable on a real property conveyance pursuant to section fifteen hundred sixty-one of this article, but shall have a different meaning if the context clearly indicates such as the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

§ 1561. Imposition of tax. Notwithstanding any other provisions of law to the contrary, any designated community, acting through its governing body, is hereby authorized and empowered to adopt a local law imposing in such designated community a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at a rate of up to two percent of the consideration for such

conveyance; any such local law shall fix the rate of such tax. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Such local law shall only be submitted for the approval of the electors at a November general election. In addition to the filings required pursuant to article three of the municipal home rule law, the local law shall be filed with the commissioner within twenty days of its approval by the electors. Notwithstanding the foregoing, prior to adoption of such local law, the designated community must establish a community preservation fund pursuant to section six-s of the general municipal law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such governing body, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

§ 1562. Payment of tax. 1. The real estate transfer tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of

return, the information which it shall contain, and the documentation that shall accompany the return. Such form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt said form to reflect the provisions in this chapter that are inconsistent, different, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as required in this section.

§ 1563. Liability for tax. 1. The real estate transfer tax shall be paid by the buyer.

2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1564. Exemptions. 1. The following shall be exempt from the payment of the tax:

(a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada); and

(b) The United Nations, the United States of America or any of its

agencies or instrumentalities.

2. The tax shall not apply to any of the following conveyances:

(a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(b) Conveyances which are or were used to secure a debt or other obligation;

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act;

(i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(j) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:

(1) agricultural, conservation, scenic, or open space easement,

(2) covenants or restrictions prohibiting development where the property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property being conveyed has had its development rights permanently removed,

(4) a transfer of development rights agreement, where the property being conveyed has had its development rights permanently removed, or

(5) real property subject to any locally adopted land preservation agreement; provided that the municipal legislative body exempts from the tax those conveyances subject to such development restriction in the local law adopted pursuant to this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law, and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in paragraph (j) of this subdivision; provided that such development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and that said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the municipality simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, parks or historic preservation purposes.

3. An exemption from the tax which is equal to the median sales price of residential real property within the applicable town or city, as determined by the commissioner, shall be allowed on the consideration of the conveyance of improved or unimproved real property or an interest therein.

§ 1565. Credit. A buyer shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such buyer on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such buyer. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such seller on the date of the subsequent conveyance (and which such seller will not be entitled to

receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1566. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fifteen hundred sixty of this article or anything to the contrary contained in subdivision five of section fifteen hundred sixty of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing

corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the seller and the buyer, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1567. Designation of agents. The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section fifteen hundred sixty-two of this article.

§ 1568. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1568-a. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such requirements he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

§ 1569. Deposit and disposition of revenue. 1. All taxes, penalties and interest imposed by the designated community under the authority of section fifteen hundred sixty-one of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the designated community and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the designated community, under the authority of section fifteen hundred sixty-one of this article, out of which the treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the designated community the taxes, penalties and interest imposed by the designated community under the authority of section fifteen hundred sixty-one of this article, collected by the treasurer, pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the designated community by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such

certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the designated community in any such distribution is more or less than the amount due to the designated community, the amount of the overpayment or underpayment shall be certified to the designated community by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the designated community as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the treasurer to such designated community shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and designated community shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the designated community, pursuant to section six-s of the general municipal law.

§ 1570. Judicial review. 1. Any final determination of the amount of any tax payable under section fifteen hundred sixty-two of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed

or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 1571. Apportionment. A local law adopted by any designated community, pursuant to this article, shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the designated community.

§ 1572. Miscellaneous. A local law adopted by any designated community, pursuant to this article, may contain such other provisions as the designated community deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of

interest on underpayments and overpayments and the imposition of civil penalties. Such provisions shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the tax imposed pursuant to this article.

§ 1573. Returns to be confidential. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county or designated community, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. Provided, however, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county or designated community in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or designated community is a party, or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

3. Nothing in this section shall be construed to prohibit the delivery to a seller or buyer of an instrument effecting a conveyance or the duly authorized representative of a seller or buyer of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification

of particular returns and the items thereof, or the inspection by the legal representatives of such county or designated community of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

ARTICLE 34

NEW YORK STATE LOTTERY FOR EDUCATION

- Section 1600. Short title.
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§ 1600. Short title. This article shall be known and may be cited as the "New York state lottery for education law."

§ 1601. Statement of purpose. This article is enacted to implement the amendment of section nine of article one of the state constitution, as approved by the vote of the people in the general election of November, nineteen hundred sixty-six, and to carry out the mandate thereof by establishing a lottery to be operated by the state, the net proceeds of which, for the fiscal year commencing April first, nineteen hundred seventy-six only, are to be applied exclusively for the purpose of providing aid to pupils with special educational needs and pupils with handicapping conditions. Thereafter, such net proceeds shall be applied for the purpose of providing supplemental aid to all school children pursuant to subdivision four of section ninety-two-c of the state finance law so as to hold harmless those programs from any reduction during the next fiscal year and so as to ensure that thereafter, subject to the provisions of paragraph (v) of subdivision three and subdivision five of section ninety-two-c of the state finance law and section four hundred ninety-five-a of article ten-C of the education law, all increases from the proceeds of the lottery shall be dedicated as increases in the funds available for the purpose of this act.

§ 1602. Definitions. As used in this article:

1. "Lottery" means the lottery operated by the state pursuant to this article.

2. "Division": (a) means the division of the lottery, as established within the New York state gaming commission; and (b) for the purposes of section sixteen hundred seventeen-a of this article, the term "division of the lottery" or "division" means the "division of gaming" as created pursuant to section one hundred two of the racing, pari-mutuel wagering and breeding law.

3. "Commissioner" means the commissioner of taxation and finance or his or her duly appointed delegate.

4. "Commission" means the New York state gaming commission.

5. "Director" means the director of the division of the lottery, except for purposes of paragraph four of subsection c of section one thousand six hundred thirteen and sections one thousand six hundred fourteen and one thousand six hundred fifteen of this chapter the term "director" shall mean the "commission".

6. "Video lottery gaming" means any lottery game played on a video lottery terminal that issues electronic tickets, allows multiple players to participate in the same game and determines winners to a material degree upon the element of chance, notwithstanding that the skill of a player may influence such player's chance of winning a game. Video lottery gaming may include elements of player interaction after a player receives an initial chance.

§ 1603. Division of the lottery. There is hereby created within the commission the division of the lottery.

§ 1604. Powers and duties of the division. a. In addition to the powers and duties provided in other sections of this article, the division shall have the power and it shall be its duty to operate and administer the lottery within the state including any joint, multi-jurisdiction, and out-of-state lottery in cooperation with a government-authorized lottery of one or more other jurisdictions, and to promulgate rules and regulations governing the establishment and operation thereof, including but not limited to the following:

1. The type of lottery to be conducted.

2. The price or prices of a ticket or tickets in the lottery.

3. The numbers and sizes of the prizes on the winning tickets.
 4. The manner of selecting the winning tickets.
 5. The frequency of the drawings or selections of winning tickets.
 6. Without limit as to number, the type or types of locations at which tickets may be sold.
 7. The method to be used in selling tickets.
 8. The use of vending machines or mechanical devices of any kind.
 9. The compensation in such manner and amounts and subject to such limitations as the division may determine to licensed sellers of lottery tickets, but only where the division finds that such compensation is necessary to assure adequate availability of lottery tickets, and that the public convenience will be served thereby.
 10. The development of an internal security plan.
- b. The division is authorized to license agents to sell tickets for the state lottery. The division may require a bond from any licensed agent, in an amount to be determined by the division. Every licensed agent shall prominently display his license, or a copy thereof, as may be determined by rules and regulations of the division, in each place of business or activity where lottery tickets are sold.
- c. (1) The commission shall make regular reports to the commissioner, which reports shall include a full and complete statement of lottery revenues, prize disbursements and other expenses, and any other information the commissioner may require. (2) The commission shall make an annual report to the governor and the legislature, which shall include a summary of lottery revenues, prize disbursements and other expenses for the year preceding such report. (3) The commission shall, by January thirty-first of each year, provide the commissioner with a list of the lottery prize amounts, names and social security numbers of

the winners of New York state lottery and video lottery gaming individual prizes in excess of one million dollars in the previous calendar year.

§ 1604-a. Posting of signs to assist compulsive gamblers. The division shall cooperate with the commissioner of alcoholism and substance abuse services to ensure the posting of signs designed to assist compulsive gamblers pursuant to the provisions of subdivision (h) of section 19.09 of the mental hygiene law.

§ 1605. Lottery sales agents and other licensees. a. The division may license as agents to sell lottery tickets such persons as in its opinion will best serve public convenience, except that no license shall be issued to any person to engage in business exclusively as a lottery sales agent. The division may license such persons as in its opinion are suitable to participate in video lottery gaming pursuant to section sixteen hundred seventeen-a of this article.

b. For purposes of this article the term "person" shall be construed to mean and include an individual, partnership, limited liability company, association, organization, club, company, corporation, trust, estate, society, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include agencies and instrumentalities of the state, and counties, cities, towns and villages.

c. The division may, upon application approved by a local school district board or by the governing board of a non-public school, license as agents persons to sell lottery tickets for one lottery drawing with the compensation to be paid to the designated local school district or non-public school, provided however, that in no event may either such person be licensed, or any such local school district or non-public school receive the compensation from such a special license more than

once in any calendar year.

d. Before issuing a license to any person, the division shall consider, with respect to such person:

1. Financial responsibility and security of the business or activity in which such person is engaged.

2. Accessibility of the place of business or activity to the public.

3. Sufficiency of existing licenses to serve public convenience.

4. Whether place of business or activity is predominantly frequented by persons under the age of eighteen years.

5. Volumes of expected sales.

e. The division is hereby authorized to obtain criminal background information on any applicant for, or holder of, a lottery license for the purpose of determining whether a license should be granted, suspended, or revoked. The sources of such information include the license applicant or holder, the division of criminal justice services, and any licensing agency which is currently considering a licensing application or which has been granted a presently-held license to the same license applicant or holder. The division shall require each license applicant to submit identifying information which shall include fingerprints unless they are already on file with the division or other state agencies. The fingerprints so obtained shall be forthwith forwarded, and the applicable fee transmitted, to the division of criminal justice services or any other state or federal government agency having facilities for checking fingerprints for the purpose of determining whether or not criminal charges are pending against the applicant or whether or not the applicant had previously been convicted of a crime, and such agency shall promptly report a finding of such pending charges and previous convictions, if any, to the division in writing or by electronic means or any other method agreed upon by the division and such agency. Prior to or upon making a determination not to

approve an application for a lottery license based upon an applicant's criminal history record, the division shall provide such applicant with a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such record pursuant to regulations and procedures established by the division of criminal justice services. In its discretion, the division may decline to act on any application pending the disposition of any pending charges against the applicant. The division may, after providing notice and an opportunity for a hearing pursuant to the state administrative procedure act, deny a license to any person found to have committed a felony under the laws of the United States or under the laws of the state of New York or any other state or foreign jurisdiction or any crime relating to gaming activities or that is otherwise found to have engaged in conduct which would be prejudicial to public confidence in the state lottery. All determinations to grant or deny a license pursuant to this section shall be in accordance with subdivision sixteen of section two hundred ninety-six of the executive law and article twenty-three-A of the correction law. Notwithstanding the provisions of article six of the public officers law or any other law to the contrary, the division may withhold from public disclosure any criminal history information except that criminal convictions may not be withheld under this provision.

For purposes of this article, a licensee may include: a lottery sales agent; a video lottery gaming agent; a vendor; a vendor's subcontractor; an employee of an agent, vendor or vendor's subcontractor; or an officer, director, partner, trustee or owner of an agent, vendor or vendor's subcontractor.

f. No employee of a lottery sales agent shall be required as a condition of employment to sell lottery tickets if his or her religious beliefs militate against such activity.

g. Notwithstanding any other provision of this section to the contrary, in considering the issuance of a license to a benevolent order or any other association, organization or club that is distinctly private in its nature under section forty of the civil rights law, the

division is not required to consider paragraph two of subdivision d of this section. In conducting activities pursuant to the license, such benevolent order, association, organization or club shall comply with section forty-c of the civil rights law to the extent that such section applies.

§ 1606. Authorization of lottery sales agents. Notwithstanding any other provision of law, any agent licensed pursuant to this article is hereby authorized and empowered to act as a lottery sales agent.

§ 1607. Suspension and revocation of licenses. The division may suspend or revoke, after notice and an opportunity for a hearing pursuant to the state administrative procedure act, any license issued pursuant to this article. Such license may, however, be temporarily suspended by the division without prior notice, pending any prosecution, investigation or hearing. A license may be suspended or revoked by the division for one or more of the following reasons:

a. Failure to account for lottery tickets received or the proceeds of the sale of lottery tickets or to file a bond if required by the division or to comply with instructions of the division concerning the licensed activity;

b. Conviction of any offense as defined in the penal law, or any felony under the laws of the United States or under the laws of the state of New York or any other state or foreign jurisdiction or any crime relating to gaming activities;

c. Failure to file any return or report, to keep records or to pay any tax required by any article of this chapter;

d. Fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the state lottery;

e. With respect to a lottery sales agent, the number of lottery

tickets sold by the lottery sales agent is insufficient to meet administrative costs and public convenience is adequately served by other licensees;

f. A material change, since issuance of the license, with respect to any matters required to be considered by the division under subdivision d or e of section sixteen hundred five of this article.

g. Conviction for misuse of food stamps pursuant to section one hundred forty-seven of the social services law.

h. A violation of article thirteen-F of the public health law as provided in this subdivision:

1. A license shall be suspended for a period of one year upon notification to the division by the commissioner of health of a lottery sales agent's accumulation of three or more points pursuant to subdivision three of section thirteen hundred ninety-nine-ee of the public health law.

2. A license shall be revoked for one year upon notification to the division by the commissioner of health of a lottery sales agent's fourth violation of article thirteen-F of the public health law within a three year period.

§ 1608. Other statutes not applicable. No other law providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery shall apply to the sale of tickets or acts performed pursuant to this article.

§ 1609. Lottery tickets. a. Lottery tickets shall be in such form as the division may prescribe. No ticket shall be sold at a price greater than that fixed by the division nor shall a sale be made by any person other than a licensed lottery sales agent, and a violation of these provisions shall be a misdemeanor, but this shall not be deemed to

prevent any person from giving lottery tickets as premiums to customers, employees or other dealing with him.

b. 1. Notwithstanding any inconsistent provision of any other law, rule or regulation, any contract for the printing or purchase of tickets shall only be awarded after bids made on specifications compiled and advertised in the manner provided by law for the advertisement of contracts for the purchase of materials and supplies, by the commissioner of general services and only to the lowest responsible bidder as that term is herein defined.

2. For purposes of this section the term "lowest responsible bidder" shall mean and only include a responsible bidder who

(a) submits a bid which is lower than any other bid and whose production facilities for such tickets are located in this state; or

(b) submits a bid which is the lowest of any bid submitted by a responsible bidder whose production facilities for such tickets are located in this state and which bid does not exceed by more than ten percent the bid of any responsible bidder whose production facilities are located outside the state; or

(c) has located his production facilities for tickets outside the state and submits a bid of which one hundred ten percent of the amount thereof is lower than any bid submitted by any responsible bidder whose production facilities are located in this state and is lower than the bid of any other responsible bidder whose production facilities are not located in this state.

§ 1610. Sales to certain persons prohibited. a. No ticket shall be sold to any person under the age of eighteen years, but this shall not be deemed to prohibit the purchase of a ticket for the purpose of making a gift by a person eighteen years of age or older to a person less than that age. Any licensee or the employee or agent of any licensee who sells or offers to sell a lottery ticket to any person under the age of eighteen shall be guilty of a misdemeanor.

b. No ticket shall be sold to and no prize shall be paid to any of the

following persons:

- (i) any member, officer or employee of the division; or
- (ii) any member, officer or employee of the department of taxation and finance whose duties directly relate to the operation of the state lottery; or
- (iii) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any of the foregoing persons.

§ 1611. Delivery of funds; designation of banks. a. Except as otherwise provided in this section, all moneys received by any and all lottery sales agents from the sales of lottery tickets, including any lottery tickets, for the support of winter sports physical education in commemoration of the XIII olympic winter games if any, less the amount, if any, retained pursuant to paragraph nine of subdivision a of section sixteen hundred four of this article shall be delivered to the division. The division shall immediately deposit to its credit all such moneys received in banks, banking houses or trust companies designated by the commissioner and the comptroller. The division in its discretion, may require any or all lottery sales agents to deposit such moneys to the division's credit in banks, banking houses or trust companies designated by it, with the approval of the commissioner and the comptroller and to file with the division reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as the division may require. The withdrawal, pursuant to section sixteen hundred twelve of this article, of moneys so deposited by the division or lottery sales agents shall be subject to a check signed by the director or such officers or employees of the division as the director may designate.

b. The division may make arrangements for any person, including a bank, banking house or trust company, to perform such functions, activities or services in connection with the operation of the lottery as the division may prescribe and such functions, activities and services shall constitute lawful functions, activities and services of such person.

§ 1612. Disposition of revenues. a. The division shall pay into an account, to be known as the lottery prize account, under the joint custody of the comptroller and the commissioner, within one week after collection of sales receipts from a lottery game, such moneys necessary for the payment of lottery prizes but not to exceed the following percentages, plus interest earned thereon:

(1) sixty percent of the total amount for which tickets have been sold for a lawful lottery game introduced on or after the effective date of this paragraph, subject to the following provisions:

(A) such game shall be available only on premises occupied by licensed lottery sales agents, subject to the following provisions:

(i) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(ii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the square footage if such premises are used as:

(I) a commercial bowling establishment, or

(II) a facility authorized under the racing, pari-mutuel wagering and breeding law to accept pari-mutuel wagers;

(B) the rules for the operation of such game shall be as prescribed by regulations promulgated and adopted by the division, provided however, that such rules shall provide that no person under the age of twenty-one may participate in such games on the premises of a licensee who holds a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises; and, provided, further, that such regulations may be revised on an emergency basis not later than ninety days after the enactment of this paragraph in order to conform such regulations to the requirements of this paragraph; or

(2) sixty-four and one-fourth percent of the total amount for which tickets have been sold for the "Instant Cash" game in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket, provided

however up to five new games may be offered during the fiscal year, seventy-four and one-fourth percent of the total amount for which tickets have been sold for such five games in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket; or

(3) fifty-five percent of the total amount for which tickets have been sold for any joint, multi-jurisdiction, and out-of-state lottery except as otherwise provided in paragraph one of subdivision b of this section for any joint, multi-jurisdiction, out-of-state video lottery gaming; or

(4) fifty percent of the total amount for which tickets have been sold for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete games in which the participants select no more than three or four of their own numbers to match with three or four numbers drawn by the commission for purposes of determining winners of such games, (B) "Pick 10", offered no more than twice daily, in which participants select from a specified field of numbers a subset of ten numbers to match against a subset of numbers to be drawn by the commission from such field of numbers for the purpose of determining winners of such game, (C) "Take 5", offered no more than twice daily, in which participants select from a specified field of numbers a subset of five numbers to match against a subset of five numbers to be drawn by the commission from such field of numbers for purposes of determining winners of such game; or

(5) forty percent of the total amount for which tickets have been sold for: (A) "Lotto", offered no more than twice daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the commission, from a larger specific field of numbers, as also prescribed by such rules and regulations and (B) with the exception of the game described in paragraph one of this subdivision, such other state-operated lottery games that the commission may introduce, offered no more than twice daily, commencing on or after forty-five days following the official publication of the rules and regulations for such game.

(6) the commission shall make a report on the revenues derived from the additional lottery drawings pursuant to paragraphs four and five of this subdivision and shall submit such report to the governor, the speaker of the assembly, and the temporary president of the senate by

the first day of March two thousand twenty-two.

The moneys in the lottery prize account shall be paid out of such account on the audit and warrant of the comptroller on vouchers certified or approved by the director or his or her duly designated official.

Prize money derived from ticket sales receipts of a particular game and deposited in the lottery prize account in accordance with the percentages set forth above may be used to pay prizes in such game. Balances in the lottery prize account identified by individual games may be carried over from one fiscal year to the next to ensure proper payout of games.

b. 1. Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, the commission shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph five of subdivision a of this section during the preceding month, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this section during the preceding month, not less than thirty-five percent of the total amount for which tickets have been sold for games defined in paragraph three of subdivision a of this section during the preceding month, not less than twenty and three-fourths percent of the total amount for which tickets have been sold for games defined in paragraph two of subdivision a of this section during the preceding month, provided however that for games with a prize payout of seventy-four and one-fourth percent of the total amount for which tickets have been sold, the commission shall pay not less than ten and three-fourths percent of sales into the state treasury and not less than twenty-five percent of the total amount for which tickets have been sold for games defined in paragraph one of subdivision a of this section during the preceding month; and the balance of the total revenue after payout for prizes for games known as "video lottery gaming," including any joint, multi-jurisdiction, and out-of-state video

lottery gaming, (i) less ten percent of the total revenue wagered after payout for prizes to be retained by the division for operation, administration, and procurement purposes;

(ii) less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track or the operator of any other video lottery gaming facility authorized pursuant to section sixteen hundred seventeen-a of this article. The amount of the vendor's fee shall be calculated as follows:

(A) when a vendor track is located within development zone one as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, at a rate of thirty-nine and one-half percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(B) when a vendor track is located within zone two as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, the rate of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter shall be as follows:

(1) forty-three and one-half percent for a vendor track located more than fifteen miles but less than fifty miles from a destination resort gaming facility authorized pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law;

(2) forty-nine percent for a vendor track located within fifteen miles of a destination resort gaming facility authorized pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law;

(3) fifty-one percent for vendor track located more than fifteen miles but less than fifty miles from a Native American class III gaming facility as defined in 25 U.S.C. §2703(8);

(4) fifty-six percent for a vendor track located within fifteen miles of a Native American class III gaming facility as defined in 25 U.S.C §2703(8);

(5) forty-nine percent for a video lottery gaming facility authorized pursuant to paragraph five of subdivision a of section sixteen hundred seventeen-a of this article;

(B-1) Notwithstanding subparagraph (B) of this paragraph, for the period commencing on April first, two thousand nineteen and ending on March thirty-first, two thousand twenty, for a vendor track that is located within Ontario County, such vendor fee shall be thirty-seven and

one-half percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(B-2) Notwithstanding subparagraph (B) of this paragraph, for the period commencing on April first, two thousand nineteen and ending on March thirty-first two thousand twenty, for a vendor track that is located within Saratoga County, such vendor fee shall be thirty-nine and one-half percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(C) when a video lottery facility is located at Aqueduct racetrack, at a rate of fifty percent of the total revenue wagered at the video lottery gaming facility after payout for prizes pursuant to this chapter;

(D) when a video lottery gaming facility is located in either Nassau or Suffolk counties and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, at a rate of forty-five percent of the total revenue wagered at the video lottery gaming facility after payout for prizes pursuant to this chapter.

* (E) notwithstanding clause (B) of this subparagraph, beginning on June first, two thousand twenty-five, when the vendor track is located in the county of Genesee and within forty miles of a Native American class III gaming facility as defined in 25 U.S.C. §2703(8), at a rate of fifty-six percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter; provided, however, that the following additional provisions shall apply to such vendor track:

(1) From the vendor fee amount equivalent to fifty-six percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this clause, a portion equivalent to five percent of the total revenue wagered at the vendor track after payout for prizes shall be defined as and hereinafter be referred to as the "additional vendor fee".

(2) Such additional vendor fee shall be accounted for separately by the vendor track and shall be used exclusively for the following purposes, in proportions determined annually by such vendor track in accordance with a plan submitted to the gaming commission pursuant to subclause four of this clause:

(A) reducing the costs paid by non-executive and non-managerial

employees of such vendor track for healthcare coverage offered by such vendor track;

(B) increasing salaries, hourly wages, or benefits paid to non-executive and non-managerial employees of such vendor track, or funding increases in the number of full-time equivalent non-executive and non-managerial employees; and

(C) supplementing distributions payable to participating counties or municipalities as required under existing law.

(3) Additional vendor fee revenue utilized pursuant to this clause shall not be included in any calculation used to determine amounts payable pursuant to subclause two of this clause or payments required under subclause two of this clause to the appropriate breeding fund established pursuant to article three of the racing, pari-mutuel wagering and breeding law.

(4) (A) Such vendor track shall annually submit a plan to the commission, no later than sixty days prior to the beginning of its fiscal year, detailing the allocation and use of the additional vendor fee revenue among the purposes specified in subclause two of this clause for the upcoming fiscal year. Such plan shall include specific projections for cost reductions in employee healthcare, increases in employee compensation specifying the job titles or categories benefiting therefrom, and supplemental amounts for local distributions.

(B) Such vendor track shall submit a plan to the commission, no later than sixty days after the effective date of this clause, detailing the allocation and use of such additional vendor fee among the purposes specified in subclause two of this clause for the remainder of fiscal year two thousand twenty-five. Such plan shall include specific projections for cost reductions in employee healthcare, increases in employee compensation specifying the job titles or categories benefiting therefrom, and projections of supplemental amounts of local distributions. Such plan shall also detail allocations already made between this act going into effect and the date such plan has been submitted to the commission.

(5) Such vendor track shall also submit an annual report to the gaming commission, the governor, the temporary president of the senate, and the speaker of the assembly, no later than ninety days after the end of each fiscal year, detailing the actual allocation and use of such additional

vendor fee during the preceding fiscal year. Such report shall specify the amounts applied to each purpose outlined in subclause two of this clause, provide data demonstrating the impact on employee healthcare costs and compensation including the specific job titles or categories that received increased compensation pursuant to item (B) of subclause two of this clause, detail the supplemental distributions made to localities, compare actual use to the plan, and provide justification for any significant variances.

(6) (A) The additional vendor fee shall only be used to supplement amounts previously allocated or appropriated by the corporation for the purposes stated in subclause two of this clause and may not be used to replace or backfill such amounts.

(B) The gaming commission shall have the authority to audit the use of such additional vendor fee by such vendor track. If the gaming commission determines, after notice and an opportunity for a hearing, that such funds have been used for purposes other than those authorized in subclause two of this clause or inconsistent with the plan, including a failure to benefit non-executive and non-managerial employees as required by item (B) of subclause two of this clause, the gaming commission may impose monetary penalties pursuant to its authority under the racing, pari-mutuel wagering and breeding law and may require that an amount equivalent to any funds used in a manner inconsistent with the provisions of this clause shall be expended for authorized purposes pursuant to an amended plan.

(7) Nothing contained in this clause shall affect any existing collective bargaining agreement or the obligation of such vendor track to negotiate terms and conditions of employment with any certified employee representative.

* NB Repealed April 1, 2030

* (iii) less any additional vendor's fees. Additional vendor's fees shall be calculated as follows:

(A) when a vendor track is located within region one and is located within Orange county or region two of development zone two, as such zone is defined in section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, or is located within region six of such development zone two and is located within Ontario county, the additional vendor fee received by the vendor track shall be calculated

pursuant to subclause one of this clause; provided, however, such additional vendor fee shall not exceed ten percent.

(1) The additional vendor fee is a percentage of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter. That percentage is calculated by subtracting the effective tax rate on all taxable gross gaming revenue paid by a gaming facility within the same region as the vendor track from the percentage that is ninety percent less the vendor track's vendor fee percentage and less the additional vendor fee percentage authorized pursuant to clause (D) of this subparagraph. For purposes of this clause, Seneca and Wayne counties shall be deemed to be located within region six of development zone two.

(2) The additional vendor fee paid pursuant to this clause shall commence with the state fiscal year beginning on April first, two thousand nineteen and shall be paid to a vendor track no later than ninety days after the close of the fiscal year. The additional vendor fee authorized by this clause shall only be applied to revenue wagered at a vendor track while a gaming facility in the same region as that vendor track is open and operating pursuant to an operation certificate issued pursuant to section thirteen hundred thirty-one of the racing, pari-mutuel wagering and breeding law.

** (B) for a vendor track that is located within Oneida county, within fifteen miles of a Native American class III gaming facility, such additional vendor fee shall be six and four-tenths percent of the total revenue wagered at the vendor after payout for prizes pursuant to this chapter. The vendor track shall forfeit this additional vendor fee for any time period that the vendor track does not maintain at least seventy percent of full-time equivalent employees as they employed in the year two thousand sixteen.

** NB Repealed March 31, 2027

(C) (1) for a vendor track that is located within development zone one as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, such additional vendor fee shall be six and five-tenths percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter. At the conclusion of each fiscal year, if the effective tax rate on all taxable gross gaming revenue paid by a gaming facility that is licensed under title two-A of

article thirteen of the racing, pari-mutuel wagering and breeding law, and located within New York city is below forty-four percent, the vendor track shall receive an additional calculated amount no later than ninety days after the close of the fiscal year. For the purposes of this clause, an additional calculated amount shall be the differential between forty-four percent and the effective tax rate on all taxable gross gaming revenue paid by the applicable gaming facility applied to revenue wagered at such vendor track after payout for prizes pursuant to this chapter. The vendor track must maintain at least ninety percent of full-time equivalent gaming employees as they employed in the year two thousand twenty-five to receive the additional vendor fee and additional calculated amount. The additional vendor fee and additional calculated amount authorized by this clause shall only be applied to revenue wagered at a vendor track while the applicable gaming facility referenced pursuant to this clause is open and operating pursuant to an operation certificate issued pursuant to section thirteen hundred thirty-one of the racing, pari-mutuel wagering and breeding law.

(2) To be eligible to receive the additional vendor fee authorized pursuant to this clause, a vendor track must submit an application to the gaming commission. Such application shall identify the number of full-time equivalent gaming employees employed at the facility in calendar year two thousand twenty-five.

(3) The additional vendor fee authorized by this clause shall be applicable commencing on the date that an eligible facility submits their application under subclause two of this clause to the gaming commission.

(D) (1) five percent for the following:

(I) any video lottery gaming facility located in either Nassau or Suffolk county that is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law;

(II) a vendor track located within region one and located within Orange county;

(III) any vendor track located within fifteen miles of a Native American class III gaming facility as defined in 25 U.S.C §2703(8); and

(IV) a vendor track located more than fifteen miles but less than fifty miles from a destination resort gaming facility authorized

pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law.

(2) To be eligible to receive the additional vendor fee authorized pursuant to this clause, a vendor track or video lottery gaming facility must submit an application to the gaming commission. Such application shall identify the number of full-time equivalent gaming employees employed at the facility in calendar year two thousand twenty-five.

(3) On July first of each year beginning on July first, two thousand twenty-seven, each track or facility shall certify to the gaming commission the number of full-time equivalent gaming employees employed by the facility for the preceding calendar year. If the number of full-time equivalent gaming employees certified to the gaming commission is less than the number of full-time equivalent gaming employees employed by the facility in the year two thousand twenty-five, the gaming commission may reduce the additional vendor fee received by such track or facility pursuant to this clause by the following amount:

(I) if the number of certified full-time equivalent gaming employees is less than one hundred percent but more than or equal to ninety-five percent of the original amount, one percent;

(II) if the number of certified full-time equivalent gaming employees is less than ninety-five percent but more than or equal to ninety percent of the original amount, two percent;

(III) if the number of certified full-time equivalent gaming employees is less than ninety percent but more than or equal to eighty-five percent of the original amount, three percent;

(IV) if the number of certified full-time equivalent gaming employees is less than eighty-five percent but more than or equal to eighty percent of the original amount, four percent; and

(V) if the number of certified full-time equivalent gaming employees is less than eighty percent of the original amount, the full five percent.

(4) The additional vendor fee authorized by this clause shall be applicable commencing on the date that an eligible facility submits its application under subclause two of this clause to the gaming commission.

* NB Effective until May 28, 2029

* (iii) less any additional vendor's fees. Additional vendor's fees shall be calculated as follows:

(A) when a vendor track is located within region one and is located within Orange county or region two of development zone two, as such zone is defined in section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, or is located within region six of such development zone two and is located within Ontario county, the additional vendor fee received by the vendor track shall be calculated pursuant to subclause one of this clause; provided, however, such additional vendor fee shall not exceed ten percent.

(1) The additional vendor fee is a percentage of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter. That percentage is calculated by subtracting the effective tax rate on all taxable gross gaming revenue paid by a gaming facility within the same region as the vendor track from the percentage that is ninety percent less than the percentage of the vendor track's vendor fee. For purposes of this clause, Seneca and Wayne counties shall be deemed to be located within region six of development zone two.

(2) The additional vendor fee paid pursuant to this clause shall commence with the state fiscal year beginning on April first, two thousand nineteen and shall be paid to a vendor track no later than ninety days after the close of the fiscal year. The additional vendor fee authorized by this clause shall only be applied to revenue wagered at a vendor track while a gaming facility in the same region as that vendor track is open and operating pursuant to an operation certificate issued pursuant to section thirteen hundred thirty-one of the racing, pari-mutuel wagering and breeding law.

** (B) for a vendor track that is located within Oneida county, within fifteen miles of a Native American class III gaming facility, such additional vendor fee shall be six and four-tenths percent of the total revenue wagered at the vendor after payout for prizes pursuant to this chapter. The vendor track shall forfeit this additional vendor fee for any time period that the vendor track does not maintain at least seventy percent of full-time equivalent employees as they employed in the year two thousand sixteen.

** NB Repealed March 31, 2027

* NB Effective May 28, 2029

1-a. (i) Notwithstanding any provision of law to the contrary, any

operators of a vendor track or the operators of any other video lottery gaming facility eligible to receive a capital award as of December thirty-first, two thousand eighteen shall deposit from their vendor fee into a segregated account an amount equal to four percent of the first sixty-two million five hundred thousand dollars of revenue wagered at the vendor track after payout for prizes pursuant to this chapter to be used exclusively for capital investments, except for Aqueduct, which shall deposit an amount equal to four percent of all revenue wagered at the video lottery gaming facility after payout for prizes pursuant to this chapter into a segregated account for capital investments.

(ii) Vendor tracks and video lottery gaming facilities shall be permitted to withdraw funds for projects approved by the commission to improve the facilities of the vendor track or video lottery gaming facility which enhance or maintain the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements and amenities customary to a gaming facility, provided, however, the vendor tracks and video lottery gaming facilities shall be permitted to withdraw funds for unreimbursed capital awards approved prior to the effective date of this subparagraph.

(iii) Any proceeds from the divestiture of any assets acquired through these capital funds or any prior capital award must be deposited into this segregated account, provided that if the vendor track or video lottery gaming facility ceases use of such asset for gaming purposes or transfers the asset to a related party, such vendor track or video lottery gaming facility shall deposit an amount equal to the fair market value of that asset into the account.

(iv) In the event a vendor track or video lottery gaming facility ceases gaming operations, any balance in the account along with an amount equal to the value of all remaining assets acquired through this fund or prior capital awards shall be returned to the state for deposit into the state lottery fund for education aid, except for Aqueduct, which shall return to the state for deposit into the state lottery fund for education aid all amounts in excess of the amount needed to fund a project pursuant to an agreement with the operator to construct an expansion of the facility, hotel, and convention and exhibition space

requiring a minimum capital investment of three hundred million dollars and any subsequent amendments to such agreement.

(v) The comptroller or his legally authorized representative is authorized to audit any and all expenditures made out of these segregated capital accounts.

(vi) Notwithstanding subparagraphs (i) through (v) of this paragraph, a vendor track located in Ontario county may withdraw up to two million dollars from this account for the purpose of constructing a turf course at the vendor track and may withdraw up to six million dollars in calendar year two thousand nineteen for the purpose of covering ongoing operating expenses.

(vii) Notwithstanding subparagraphs (i) through (vi) of this paragraph, a vendor track located within Saratoga county may withdraw up to three million dollars in calendar year two thousand nineteen for the purpose of covering ongoing operating expenses.

(viii) Any balance remaining in the capital award account of a vendor track or operator or any other video lottery gaming facility as of March thirty-first, two thousand nineteen shall be transferred for deposit into a segregated account established by this subparagraph.

1-b. Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision i of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery gaming facilities, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

1-c. Notwithstanding any provision of law to the contrary, the operator of a vendor track or the operator of any other video lottery gaming facility shall fund a marketing and promotion program out of the vendor's fee. Each operator shall submit an annual marketing plan for the review and approval of the commission and any other required documents detailing promotional activities as prescribed by the commission. The commission shall have the right to reject any advertisement or promotion that does not properly represent the mission

or interests of the lottery or its programs.

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack, a video lottery gaming facility authorized pursuant to paragraph five of subdivision a of section sixteen hundred seventeen-a of this article or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (B-1), (B-2), (C), or (D) of subparagraph (ii) of paragraph one of this subdivision, for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of the gross purse enhancement amount, as required by this subdivision, shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. One and one-half percent of the gross purse enhancement amount at a thoroughbred track, as required by this subdivision, shall be paid to an account established pursuant to section two hundred twenty-one-a of the racing, pari-mutuel wagering and breeding law to be used exclusively to provide health insurance for jockeys. In addition, with the exception of Aqueduct racetrack, a video lottery gaming facility authorized pursuant to paragraph five of subdivision a of section sixteen hundred seventeen-a of this article or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (B-1), (B-2), (C), or (D) of subparagraph (ii) of paragraph one of this subdivision,

shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

3. Nothing in paragraph two of this subdivision shall affect any agreement in effect on or before the effective date of this paragraph, except that the obligation to pay funds to the gaming commission to promote and ensure equine health and safety and the obligation to pay funds to an account established pursuant to section two hundred twenty-one-a of the racing, pari-mutuel wagering and breeding law to be used exclusively to provide health insurance for jockeys shall supersede any provision to the contrary in any such agreement.

c. 1. The specifications for video lottery gaming, including any joint, multi-jurisdiction, and out-of-state video lottery gaming, shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.

2. Of the ten percent retained by the division for administrative purposes, any amounts beyond that which are necessary for the operation and administration of this pilot program shall be deposited in the lottery education account.

d. Notwithstanding any law, rule or regulation to the contrary, any successor to the New York Racing Association, Inc. with respect to the operation and maintenance of video lottery gaming at Aqueduct racetrack shall be deemed the successor to the New York Racing Association, Inc. for purposes of being subject to existing contracts and loan agreements, if any, entered into by the New York Racing Association, Inc. directly related to the construction, operation, management and distribution of revenues of the video lottery gaming facility at Aqueduct racetrack.

e. The video lottery gaming operator selected to operate a video lottery terminal facility at Aqueduct will be subject to a memorandum of understanding between the governor, temporary president of the senate and the speaker of the assembly. Notwithstanding subparagraph (i) of paragraph a of subdivision eight of section two hundred twelve of the racing, pari-mutuel wagering and breeding law, the state, pursuant to an agreement with the video lottery gaming operator to operate a video lottery terminal facility at Aqueduct, may authorize, as part of such agreement or in conjunction with such agreement at the time it is executed, additional development at the Aqueduct racing facility. The selection will be made in consultation with the franchised corporation, but is not subject to such corporation's approval. The franchised corporation shall not be eligible to compete to operate or to operate a video lottery terminal facility at Aqueduct. The state will use its best efforts to ensure that the video lottery terminal facility at Aqueduct is opened as soon as is practicable and will, if practicable, pursue the construction of a temporary video lottery terminal facility at Aqueduct subject to staying within an agreed budget for such video lottery terminal facility and subject to such temporary facility not having an adverse impact on opening of the permanent facility at Aqueduct. To facilitate the opening of the video lottery gaming facility at Aqueduct as soon as is practicable, the division of the lottery may extend the term of any existing contract related to the video lottery system.

f. As consideration for the operation of the video lottery gaming facility at Aqueduct racetrack, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid, as follows:

1. Six and one-half percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, seven percent of the total wagered after payout of prizes for the second year of operation, and seven and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. One

percent of the gross purse enhancement amount, as required by this subdivision, shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned on a pro rata basis in accordance with the amounts originally contributed and shall be used for the purpose of enhancing purses at such tracks. One and one-half percent of the gross purse enhancement amount, as required by this subdivision, shall be paid to an account established pursuant to section two hundred twenty-one-a of the racing, pari-mutuel wagering and breeding law to be used exclusively to provide health insurance for jockeys.

2. One percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, one and one-quarter percent of the total wagered after payout of prizes for the second year of operation, and one and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for an appropriate breeding fund for the manner of racing conducted at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

3. (i) Four percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. Capital expenditures may include funding the construction of and initially equipping a state-based equine drug testing and research laboratory to be used pursuant to subdivision seven of section nine hundred two of the racing, pari-mutuel wagering and breeding law.

(ii) Notwithstanding subparagraph (i) of this paragraph, in the event the state provides funds to the franchised corporation for the renovation of Belmont Park racetrack, out of the amount payable to the franchised corporation for capital expenditures pursuant to subparagraph (i) of this paragraph during any state fiscal year, an amount pursuant to the repayment agreement between the state and the franchised

corporation shall instead be deposited into the miscellaneous capital projects fund, New York racing capital improvement fund as required to repay the state for funds provided for the renovation of Belmont Park racetrack. Any amount payable to the franchised corporation in any state fiscal year for capital expenditures pursuant to subparagraph (i) of this paragraph in excess of the amount pursuant to the repayment agreement between the state and the franchised corporation shall be deposited pursuant to subparagraph (i) of this paragraph. Once the state has been fully reimbursed for the costs related to the renovation of Belmont Park racetrack, this subparagraph shall no longer apply and subparagraph (i) of this paragraph shall apply.

4. Three percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

5. Paragraphs one, two, three and four of this subdivision shall be known collectively as the "racing support payments".

f-1. As consideration for operation of video lottery gaming facility located in the county of Nassau or Suffolk and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

1. Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department

of labor, bureau of labor statistics, shall instead be returned to the commission.

2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall instead be returned to the commission.

3. (i) one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall instead be returned to the commission.

(ii) Notwithstanding subparagraph (i) of this paragraph, in the event the state provides funds to the franchised corporation for the renovation of Belmont Park racetrack, and in the event the amount deposited pursuant to subparagraph (ii) of paragraph three of subdivision f of this section is insufficient to make the required repayment pursuant to such subparagraph during any state fiscal year, an amount payable to the franchised corporation for capital expenditures pursuant to subparagraph (i) of this paragraph shall instead be deposited into the miscellaneous capital projects fund, New York racing capital improvement fund to the extent necessary, when combined with the amount set forth in subparagraph (ii) of paragraph three of subdivision f of this section, to make any required repayment of funds provided by

the state related to the renovation of Belmont Park racetrack during such fiscal year. Any amount payable to the franchised corporation in any state fiscal year for capital expenditures pursuant to subparagraph (i) of this paragraph in excess of the amount pursuant to the repayment agreement between the state and the franchised corporation shall be deposited pursuant to subparagraph (i) of this paragraph. Once the state has been fully reimbursed for such costs related to the renovation of Belmont Park racetrack, this subparagraph shall no longer apply and subparagraph (i) of this paragraph shall apply.

4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall instead be returned to the commission.

g. In the event the state elects to construct a video lottery terminal facility at the Aqueduct racetrack, all video lottery terminal revenues payable to the video lottery gaming operator at the Aqueduct racetrack remaining after payment of the racing support payments shall first be used to repay the state's advances for (i) confirmation of the chapter eleven plan of reorganization and cash advances for the franchised corporation's operations following confirmation of the chapter eleven plan of reorganization and (ii) the amount expended by the state to construct such video lottery terminal facility at Aqueduct racetrack pursuant to an agreement with the state. Subparagraphs (i) and (ii) of this paragraph shall be defined as the state advance amount and the amounts payable to the division of the lottery.

h. As consideration for the operation of a video lottery gaming

facility located in Orange county, the division shall cause the investment in the racing industry at the following amount from the vendor fee to be paid as follows:

As amount to the horsemen for purses at a licensed racetrack in Sullivan county in an amount equal to eight and three-quarters percent of the total revenue wagered at the video lottery gaming facility, after pay out for prizes. The facility located in Orange county, as defined in paragraph five of subdivision a of section sixteen hundred seventeen-a of this article shall pay to the horsemen at a licensed racetrack at Yonkers racetrack an amount to maintain purses for such horsemen at the same dollar levels realized in two thousand eighteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics. In addition, one and one-quarter percent of total revenue wagered at the video lottery gaming facility after pay out for prizes, received pursuant to clause (B) of subparagraph (ii) of paragraph one of subdivision b of this section, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track. In no circumstance shall net proceeds of the lottery, including the proceeds from video lottery gaming, be used for the payment of non-lottery expenses of the gaming commission, administrative or otherwise.

§ 1613. Certification of prize winners; payment of prizes. a. It shall be the duty of the director to require that all prizes over five thousand dollars in any game be awarded to holders of winning tickets for that game as provided in this section and section sixteen hundred fourteen of this article. Within one week after any drawing or selection of prize winning lottery tickets, the division shall deliver to the comptroller a certified list of the tickets to which prizes are awarded and the amount of each such prize. Upon receipt of such certified list and voucher of the division, moneys sufficient for the payment of such prizes shall be paid to the division from the lottery prize account, upon audit and warrant of the comptroller. Moneys for the payment of lottery prizes shall be deposited by the director as provided in section sixteen hundred eleven of this article and the withdrawal of such moneys

for the payment of prize winners shall be subject to a check signed by the director or such officers or employees of the division as the director may designate. The division shall each month provide the comptroller with a record of all such withdrawals from the director's accounts. Payment of prizes shall be made by the division to holders of the tickets to which prizes are awarded, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, may be paid pursuant to a court order granted as a result of a proceeding as provided in subdivision d of this section, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The division shall be discharged of all further liability upon payment of a prize pursuant to this subdivision.

b. If the person entitled to a prize on any winning ticket is under the age of eighteen years, and such prize is less than five thousand dollars, the division may make payment by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize on any winning ticket is under the age of eighteen years and if such prize is five thousand dollars or more, the division may make payment to such minor by depositing the amount of the prize in any financial institution to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by part six of article seven of the estates, powers and trusts law, and for purposes of this section the terms "adult", "member of a minor's family", and "guardian" and "financial institution" shall have the same meaning as in said part of said law. The division shall be discharged of all further liability upon payment of a prize to a minor pursuant to this subdivision.

c. 1. Notwithstanding any inconsistent provision of law, the director may award and pay a "Lotto" prize to a claimant without a winning ticket, if:

- (i) the claimant has filed a perfected claim therefor;
- (ii) the perfected claim is for a first prize in excess of five million dollars;

- (iii) at least one year has elapsed since the date of the drawing for which the prize is claimed;
- (iv) no other perfected claim has been filed therefor; and
- (v) the perfected claim has been authenticated by the division.

2. For purposes of this section, a "perfected claim" shall consist of a written request that the prize be awarded and paid to the claimant, accompanied by:

- (i) a "Players Copy" of a claim validation report showing that the original winning lottery ticket was produced by the on-line lottery computer system at the same time and place as the validation of a previous first-prize claim in the "Daily Numbers" game;
- (ii) "Lotto" play cards bearing the same number combinations as were played at such time and place immediately before or immediately following the validation of such "Daily Numbers" first prize claim;
- (iii) a written statement from the licensed lottery sales agent stating that the agent believes the missing ticket was sold to the claimant;
- (iv) a verified written statement explaining the circumstances under which the winning ticket was lost; and
- (v) a filing fee of one hundred dollars.

3. Within thirty days of the receipt of a perfected claim, the division shall attempt to authenticate it by comparing it to the records of the division, including electronic information provided by its on-line service provider. A perfected claim may be deemed "authenticated" if:

- (i) the "Players Copy" and "Lotto" play cards included therewith correspond to the records of the division; and
- (ii) none of the information included in the perfected claim is contradicted by the records of the division.

4. The director may promulgate rules and regulations to implement the provisions of this subdivision.

d. 1. The right of any person to receive payments under a prize that is paid in installments over time by the division may be voluntarily

assigned, in whole or in part, if the assignment is made to a person or entity designated pursuant to an order of the supreme court of the county where the assigning prize winner resides or where the headquarters of the division is located. A court may issue an order approving a voluntary assignment and directing the division to make prize payments in whole or in part to the designated assignee, if the court finds that all of the following conditions have been met:

(i) The assignment is in writing, is executed by the assignor, and is, by its terms, subject to the laws of this state.

(ii) The purchase price being paid for the payments being assigned represents a present value of the payments being assigned, discounted at an annual rate that does not exceed ten percentage points over the Wall Street Journal prime rate published on the business day prior to the date of execution of the contract.

(iii) The contract of assignment expressly states that the assignor has three business days after the contract was signed to cancel the assignment.

(iv) The assignor provides a sworn affidavit attesting that he or she:

(A) Is of sound mind, is in full command of his or her faculties, and is not acting under duress;

(B) Has been advised regarding the assignment by his or her own independent legal counsel, who is unrelated to and is not being compensated by the assignee or any of the assignee's affiliates, and has received independent financial or tax advice concerning the effects of the assignment from a lawyer or other professional who is unrelated to and is not being compensated by the assignee or any of the assignee's affiliates;

(C) Understands that he or she will not receive the prize payments or portions thereof for the years assigned;

(D) Understands and agrees that, with regard to the assigned payments, the division and its officials and employees will have no further liability or responsibility to make the assigned payments to him or her;

(E) Has been provided with a one-page written disclosure statement setting forth, in bold type of not less than fourteen points, the payments being assigned, by amounts and payment dates; the purchase price being paid; the rate of discount to present value, assuming daily compounding and funding on the contract date; and the amount, if any, of

any origination or closing fees that will be charged to him or her; and

(F) Was advised in writing, at the time he or she signed the assignment contract, that he or she had the right to cancel the contract, without any further obligation, within three business days following the date on which the contract was signed.

(v) Written notice of the proposed assignment and any court hearing concerning the proposed assignment is provided to the division's counsel at least thirty days prior to any court hearing. The division is not required to appear in or be named as a party to any such action seeking judicial confirmation of an assignment under this subdivision, but may intervene as of right in any such proceeding.

2. A certified copy of a court order approving a voluntary assignment must be provided to the division no later than thirty days before the date on which the payment is to be made.

3. A court order obtained pursuant to this section, together with all such prior orders, shall not require the division to divide any single prize payment among more than three different persons. Nothing in this section shall prohibit substituting assignees as long as there are no more than three assignees at any one time for any one-prize payment.

4. If a husband and wife are co-owners of a prize, any assignment of the prize must be made jointly.

5. A voluntary assignment may not include portions of payments that are subject to offset on account of a defaulted or delinquent child support obligation, non-wage garnishment, or criminal restitution obligation or on account of a debt owed to a state agency. Each court order issued under paragraph one of this subdivision shall provide that any delinquent child support or criminal restitution obligations of the assigning prize winner and any debts owed to a state agency by the assigning prize winner, as of the date of the court order, shall be set off by the division first against remaining payments or portions thereof due the prize winner and then against payments due the assignee.

6. The division and its respective officials and employees shall be

discharged of all liability upon payment of an assigned prize under this subdivision. The assignor and assignee shall hold harmless and indemnify the division, the state of New York, and its employees and agents from all claims, actions, suits, complaints, and liabilities related to the assignment.

7. The division may establish a reasonable fee to defray any administrative expenses associated with assignments made under this subdivision, including the cost to the division of any processing fee that may be imposed by a private annuity provider. The fee amount shall reflect the direct and indirect costs associated with processing assignments.

8. If at any time the Internal Revenue Service or a court of competent jurisdiction issues a determination letter, revenue ruling, other public ruling of the Internal Revenue Service, or published decision to the division or to any lottery prize winners declaring that the voluntary assignment of prizes will affect the federal income tax treatment of prize winners who do not assign their prizes, the division shall immediately file a copy of that letter, ruling, or published decision with the attorney general, the secretary of state, and the administrative office of court administration. A court may not issue an order authorizing a voluntary assignment under this subdivision after the date any such ruling, letter, or published decision is filed.

9. A contract of assignment in which the assignor is a lottery winner shall include a sworn affidavit from the assignee. The form of the affidavit shall include:

- (i) A summary of assignee contacts with the winner;
 - (ii) A summary of any law suits, claims, and other legal actions from lottery winners regarding conduct of the assignee or its agents;
 - (iii) A statement that the assignee is in good standing in its state of domicile and with any other licensing or regulatory agency as may be required in the conduct of its business;
 - (iv) A brief business history of the assignee;
 - (v) A statement describing the nature of the business of the assignee;
- and

(vi) A statement of the assignee's privacy and non-harassment policies and express affirmation that the assignee has followed those policies in New York.

10. The assignee shall notify the division of its business location and mailing address for payment purposes during the entire course of the assignment. The division shall be discharged of all further liability upon payment of a prize pursuant to this subdivision.

§ 1613-a. Crediting of lottery prizes against past-due support. (1)

The director of the lottery, on behalf of the division of the lottery, shall enter into a written agreement with the commissioner of the office of temporary and disability assistance, on behalf of the state office of temporary and disability assistance, which shall set forth the procedures for crediting any lottery prize of six hundred dollars or more awarded to an individual, estate or trust against past-due support owed by such individual, estate or trust of which the director of the lottery has been notified by the commissioner of the office of temporary and disability assistance pursuant to the provisions of such agreement.

(2) Such agreement shall apply to past-due support which is owed to persons or entities entitled to enforce an order of support with respect to persons receiving services pursuant to title six-A of article three of the social services law. For purposes of this section, an "order of support" means any final order, decree or judgment in a matrimonial action or family court proceeding, or any foreign support order, decree or judgment which is registered pursuant to article five-B of the family court act, which requires the payment of alimony, maintenance, support or child support. For purposes of this section, "past-due support" means the amount of a delinquency determined from an order of support no longer subject to appellate judicial review.

(3) Such agreement shall include:

(a) the procedure under which the state office of temporary and disability assistance shall notify the division of the lottery of liability for past-due support, such procedure to specify when the division of the lottery shall be notified and the content of such notification;

(b) the minimum period of delinquency in payment of past-due support and the minimum amount of past-due support with respect to which the division of the lottery shall, pursuant to this section, credit any lottery prize of six hundred dollars or more against past-due support;

(c) the procedure for reimbursement of the division of the lottery by the state office of temporary and disability assistance for the full cost of carrying out the procedures authorized by this section; and

(d) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section.

(4) Prior to awarding any lottery prize of six hundred dollars or more, the division of the lottery shall review the notice of liability of past-due support provided by the state office of temporary and disability assistance. For each lottery prize winner identified on such notice as an individual, estate or trust owing past-due support, the lottery division shall credit to the state office of temporary and disability assistance such amount of the prize to satisfy the past-due support, and any remainder shall be awarded to the prize winner. In cases where the prize winner owes past-due support to more than one person or entity, and the total amount of past-due support provided in the notice of liability of past-due support to the division of the lottery by the state office of temporary and disability assistance exceeds the balance remaining, each such person or entity shall receive a pro rata share of the balance remaining, such share to be based on the amount of past-due support owed to such person or entity as provided to the division of the lottery by such office pursuant to this section. The state office of temporary and disability assistance shall be responsible for determining and distributing each person's or entity's pro rata share of past-due support pursuant to regulations of such office.

(5) The division of the lottery shall certify to the comptroller the total amount of the lottery prize winning to be credited against past-due support and the remainder of such prize winning to be awarded to the prize winner.

(6) The division of the lottery shall notify the prize winner in writing of the total amount of the lottery prize winning to be credited against past-due support and the remainder of such prize winning to be awarded to the prize winner. Such notice shall further advise the prize winner that the office of temporary and disability assistance shall

provide separate notice, in writing, to the prize winner of the procedure for and time frame by which the prize winner may contest such crediting.

(7) The office of temporary and disability assistance shall notify the prize winner in writing, of the amount of such prize winning to be credited against past-due support and the procedure and time frame by which the prize winner may contest such crediting based on defenses that are not subject to family court jurisdiction. Such procedure shall include the address and telephone number of the local department of social services' support collection unit which may be contacted with respect to correction of any error in such crediting concerning such individual's, estate's or trust's liability for past-due support or with respect to payment of such liability.

(8) (a) For purposes of this section, past-due support owed to persons who are receiving services pursuant to title six-A of article three of the social services law may include:

(i) amounts representing delinquencies which have accrued under a court order of support; or

(ii) with respect to any court order of support made which establishes an arrears amount, the entire amount of such arrears.

(b) For the purpose of the state child support enforcement program, any payment made by a respondent which is insufficient to fully satisfy both the current support obligations and a periodic payment toward the balance of any arrears amount established by court order shall be first applied toward the current support obligation or any delinquency thereon and then toward the periodic payment on any arrears amount established by court order unless otherwise required by federal regulation.

(9) From the time the division of the lottery is notified by the state office of temporary and disability assistance of an individual's, estate's or trust's liability for past-due support under the agreement provided for in this section, the division of the lottery and the department shall be relieved from all liability to such individual, estate or trust, their assigns, successors, heirs or representatives for the amount of any lottery prize winning of six hundred dollars or more certified to the comptroller to be credited against past-due support and such individual, estate or trust shall have no right to commence a court action or proceeding or to any other legal recourse against the division

of the lottery or the department to recover such overpayment or such interest certified to the comptroller to be credited against past-due support. Provided, however, nothing herein shall be construed to prohibit such individual, estate or trust from proceeding against the state office of temporary and disability assistance or the appropriate local social services district to recover that part of such overpayment or interest thereon so certified to the comptroller to be credited against past-due support which is greater than the amount of past-due support owed by such individual, estate or trust on the date of such certification.

(10) The division of the lottery shall promulgate such rules and regulations as it deems necessary to carry out the provisions of this section.

§ 1613-b. Crediting of lottery prizes against public assistance benefits. (1) Notwithstanding any limitations in section one hundred four of the social services law, the director of the lottery, on behalf of the division of the lottery, shall enter into a written agreement with the commissioner of the office of temporary and disability assistance, on behalf of the office of temporary and disability assistance, which shall set forth the procedures for crediting any lottery prize of six hundred dollars or more awarded to an individual against any and all public assistance benefits which were given to or on behalf of such individual within a period of up to ten years prior to the issuance of such prize of which the director of the lottery has been notified by the commissioner of the office of temporary and disability assistance pursuant to the provisions of such agreement; provided, however, that in no event shall such credit to the office of temporary and disability assistance exceed fifty percent of any such lottery prize and provided further that, unless otherwise determined cost effective by the commissioner of the office of temporary and disability assistance and the director of the lottery such procedure shall be required only to the extent that and with respect to periods for which it can be effected through automated type match.

(2) Such agreement shall include: (a) the procedure under which the office of temporary and disability assistance and the division of the

lottery shall exchange information concerning lottery winnings and persons liable for receipt of public assistance within the previous ten years;

(b) subject to the approval of the director of the budget the procedure for reimbursement of the division of the lottery by the office of temporary and disability assistance for the additional cost of carrying out the procedures authorized by this section;

(c) provision for crediting lottery prizes to past-due support in accordance with subdivisions ten and eleven of section one hundred eleven-b of the social services law prior to effecting any such credit against public assistance; and

(d) such other matters as the parties to such agreement shall deem necessary to carry out the provisions of this section.

(3) Prior to awarding any lottery prize of six hundred dollars or more, the division of the lottery shall review the notice of liability of public assistance benefits paid provided by the office of temporary and disability assistance. For each lottery prize winner identified on such notice as an individual, who is receiving or has received, within the last ten years, public assistance benefits, the lottery division shall credit to the office of temporary and disability assistance such amount of the prize to satisfy the amount of public assistance benefits indicated as received within the previous ten years, and any remainder shall be awarded to the prize winner; provided, however, that in no event shall such credit to the office of temporary and disability assistance exceed fifty percent of any such lottery prize.

(4) The division of the lottery shall certify to the comptroller the total amount of the lottery prize winning to be credited against public assistance benefits owed to the state and the remainder of such prize winning to be awarded to the prize winner.

(5) The division of the lottery shall notify the prize winner in writing of the total amount of the lottery prize winning to be credited against public assistance benefits and the remainder of such prize winning to be awarded to the prize winner. Such notice shall further advise the prize winner that the office of temporary and disability assistance shall provide separate notice, in writing, to the prize winner of the procedure for and time frame by which the prize winner may contest such crediting.

(6) The office of temporary and disability assistance shall notify the prize winner in writing, of the amount of such prize winning to be credited against public assistance benefits and the procedure and time frame by which the prize winner may contest such crediting. Such procedure shall include the address and telephone number of the office of temporary and disability assistance and who the prize winner may contact with respect to correction of any error in such crediting concerning such individual's liability for public assistance benefits or with respect to payment of such liability.

(7) From the time the division of the lottery is notified by the office of temporary and disability assistance of an individual's liability for public assistance benefits under the agreement provided for in this section, the division of the lottery shall be relieved from all liability to such individual, their assigns, successors, heirs or representatives for the amount of any lottery prize winning of six hundred dollars or more certified to the comptroller to be credited against public assistance benefits and such individual shall have no right to commence a court action or proceeding or to any other legal recourse against the division of the lottery to recover such lottery winnings certified to the comptroller to be credited against public assistance benefits. Provided, however, nothing herein shall be construed to prohibit such individual from proceeding against the office of temporary and disability assistance to recover that part of such lottery winnings thereon so certified to the comptroller to be credited against public assistance benefits which is greater than the amount of public assistance benefits paid to such individual within ten years of the date of such certification.

(8) The division of the lottery shall promulgate such rules and regulations as it deems necessary to carry out the provisions of this section.

§ 1613-c. Crediting of lottery prizes against liabilities for taxes administered by the commissioner. (1) The director, on behalf of the division, shall enter into a written agreement with the commissioner, on behalf of the department, within sixty days of the effective date of this section, which will set forth procedures for crediting lottery

prizes of more than six hundred dollars awarded to holders of winning lottery tickets, whether individuals, corporations, associations, companies, partnerships, limited liability partnerships or companies, partners, members, managers, estates, trust fiduciaries or entities, against past due tax liabilities owed by such holders for any tax administered by the commissioner, about which the director has been notified by the commissioner pursuant to the provisions of such agreement.

(2) Such agreement shall apply to any past due tax liability which arises from (i) an enforceable warrant or judgment, (ii) an enforceable determination of an administrative body which is no longer subject to administrative or judicial review, or (iii) an assessment or determination (including self-assessment or self-assessed determination) which has become final or finally and irrevocably fixed and no longer subject to administrative or judicial review.

(3) Such agreement shall include:

(a) the procedure under which the department will notify the division of tax liabilities, including when the division will be notified and the content of that notification;

(b) the procedure for reimbursement of the division by the department for the cost of carrying out the procedures authorized by this section; and

(c) any other matters the parties to the agreement deem necessary to carry out the provisions of this section.

(4) Prior to awarding lottery prizes of more than six hundred dollars, the division shall review the most recent notice of tax liabilities provided by the commissioner. For holders of winning lottery tickets identified on that notice, the division shall credit to the department the amount of each holder's prize necessary to satisfy that holder's tax liability, and the remainder of the prize shall be awarded to the holder of the winning ticket.

(5) If the division has also received a notice of liability of a prize winner for past-due support or public assistance benefits pursuant to section sixteen hundred thirteen-a or sixteen hundred thirteen-b of this article, then the amount of any prize shall be first credited or applied to the income tax required to be withheld by law, then as required by section sixteen hundred thirteen-a or sixteen hundred thirteen-b of this

article, then to the past due tax liability as required by this section. The balance will then be paid to the holder of the winning lottery ticket.

(6) The division shall certify to the comptroller the total amount of the lottery prize to be credited against past due tax liabilities and the remainder of the prize to be awarded to the holder of the winning lottery ticket.

(7) The division shall notify the holder of the winning lottery ticket, in writing, of the total amount of the lottery prize credited against past due tax liabilities and the remainder of the prize to be awarded to the holder. That notice must also advise the holder that the department will provide separate notice, in writing, of the procedure for and time frame by which the holder may contest such crediting.

(8) The department shall notify the holder of the winning lottery ticket, in writing, of the amount of a prize to be credited against past due tax liabilities and the procedure for and time frame by which the holder may contest the crediting of the prize.

(9) From the time the division is notified by the department of a past due tax liability of a holder of a winning lottery ticket, the division shall be relieved from all liability to the holder, and the holder's heirs, representatives, estate, successors or assigns for the amount of a prize certified to the comptroller to be credited against past due tax liabilities and the holder and the holder's heirs, representatives, estate, successor or assigns shall have no right to commence a court action or proceeding or to any other legal recourse against the division to recover any amount certified to the comptroller to be credited against past due tax liabilities. Provided however, nothing herein shall be construed to prohibit a holder of a winning lottery ticket and the holder's heirs, representatives, estate, successors or assigns from proceeding against the department to recover the part of the prize certified to the comptroller and credited to past due tax liabilities which is greater than the amount of past due tax liabilities owed by that holder on the date of certification.

(10) Notwithstanding any law to the contrary, the department and its officers and employees may furnish to the division any abstract of any tax return or report, or any information concerning an item contained in any such return or report or disclosed by any investigation of tax

liability under this chapter, but only for the purpose of crediting lottery prizes against past due tax liabilities described in subdivision two of this section.

§ 1614. Unclaimed and abandoned prize money. a. No prize claim shall be valid if submitted to the commission following the expiration of a one-year time period from the date of the drawing or from the close of the game in which a prize was won, and the person otherwise entitled to such prize shall forfeit any claim or entitlement to such prize moneys. Unclaimed prize money, plus interest earned thereon, shall be retained in the lottery prize account to be used for payment of special lotto or supplemental lotto prizes offered pursuant to the plan or plans specified in this article, or for promotional purposes to supplement other games on an occasional basis not to exceed sixteen weeks within any twelve month period pursuant to the plan or plans specified in this article.

Furthermore, the commission shall not use funds from such lottery prize account for such payments, as provided herein, in excess of sixty million dollars in any fiscal year. All unclaimed prize money in excess of the sixty million dollars spending limitation shall, at the end of the fiscal year, be paid into the state treasury to the credit of the state lottery fund created by section ninety-two-c of the state finance law.

In the event that the director proposes to change any plan for the use of unclaimed prize funds or in the event the director intends to use funds in a game other than the game from which such unclaimed prize funds were derived, the director of the budget, the chairperson of the senate finance committee, and the chairperson of the assembly ways and means committee shall be notified in writing separately detailing the proposed changes to any plan prior to the implementation of the changes.

b. The division may determine that a prize has been abandoned whenever more than eighteen months have elapsed since a prize payment check was mailed to the last known address of the claimant and either such check

has been returned undelivered by the United States postal service and the claimant cannot be located or such check has not been returned undelivered and has not been presented for payment. Any prize so determined to have been abandoned shall be paid to the state comptroller pursuant to section thirteen hundred fifteen of the abandoned property law.

§ 1615. Fiscal year of lottery, reporting requirements and fiscal planning. a. All books, accounts and records of the division, relating to the state lottery, shall be kept by fiscal years beginning on the first day of April and ending on the thirty-first day of March next following. The division shall separately identify the actual sales receipts, prizes, appropriations and expenditures for advertising and promotions, reserves and the interest thereon by type by game, and the source and use of unclaimed prize funds by type by game on an accrual and cash basis where both are available and on an accrual or cash basis where both are not available.

b. The director shall submit to the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee, an annual plan detailing the projected use of appropriations for advertising and promotions, reserves and the interest thereon by type by game, and the source and use of unclaimed prize funds by type by game. Such plan shall be submitted not later than submission of the executive budget to the legislature each year and shall be updated quarterly on or before May fifteenth, August fifteenth and November fifteenth of any given calendar year. Such plan shall be considered the financial plan to be followed by the division in the subsequent fiscal year unless modified during legislative deliberations on the state budget. Such plan or update thereto shall include any plans for the introduction of a new game prior to its introduction and shall be subject to subdivision a of section sixteen hundred fourteen of this article.

c. Such plan and any update thereto shall describe the specific amount of funds to be used to implement each element of the plan by type by

game on an accrual and cash basis where both are available and on an accrual or cash basis where both are not available. They shall include the intended duration of such use, the revenues expected to be generated by such use, the actual sales, prize awards, appropriations and expenditures for advertising and promotions, reserves and the interest thereon, and the source and use of unclaimed prize funds by type by game, and such other information as the director deems appropriate. Such plan and any update thereto shall also describe an evaluation of the previous quarterly and fiscal year-to-date losses or gains therefrom. Such updates shall report estimated year-end balances pursuant to the plan and adjusted estimated year-end balances based on updates to the plan by type by game.

d. Such plan and any update thereto shall include information on the implementation and ongoing operation of a lottery game established pursuant to paragraph one of subdivision a of section sixteen hundred twelve of this article. Such information shall include, but not be limited to, a statewide and a county by county breakdown of premises with television equipment that automatically displays the results of such game including:

- (1) the total number of such premises;
- (2) the total sales of such premises;
- (3) the average sales per hour of operation of such game;
- (4) the average and median square footage of such premises as defined by item (i) of subparagraph (A) of paragraph one of subdivision a of section sixteen hundred twelve of this article;
- (5) the total number of such premises and total sales by type as defined by item (i) or (ii) of subparagraph (A) of paragraph one of subdivision a of section sixteen hundred twelve of this article.

In addition, the nineteen hundred ninety-eight--ninety-nine annual plan shall include an evaluation, done in conjunction with the commissioner of mental health, of the impact of a lottery game, established pursuant to paragraph one of subdivision a of section sixteen hundred twelve of this article, on compulsive gambling.

§ 1616. Continuation of licenses. All licenses issued by the commissioner to lottery sales agents prior to the effective date of this act shall continue in effect by their terms and subject to the general jurisdiction of the division.

§ 1617. Joint, multi-jurisdiction, and out-of-state lottery. The director may enter into an agreement with a government-authorized group of one or more other jurisdictions providing for the operation and administration of a joint, multi-jurisdiction, and out-of-state lottery. Such a joint, multi-jurisdiction, and out-of-state lottery game or games may include a combined drawing, a combined prize pool, the transfer of sales and prize monies to other jurisdictions as may be necessary, and such other cooperative arrangements as the director deems necessary or desirable.

§ 1617-a. Video lottery gaming. a. The gaming commission is hereby authorized to license, pursuant to rules and regulations to be promulgated by the gaming commission, the operation of video lottery gaming at;

(1) Aqueduct, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks;

(2) any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York state exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack;

(3) a maximum of two facilities, which shall be vendors for all purposes under this article established within region three of zone one as defined by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, one each operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Suffolk region and

the Nassau region to be located within a facility authorized pursuant to sections one thousand eight or one thousand nine of the racing, pari-mutuel wagering and breeding law, provided however, that in the Nassau region such facility shall not exceed one thousand video lottery gaming devices and in the Suffolk region such facility shall not exceed two thousand video lottery gaming devices; and

(4) Aqueduct racetrack, within the lottery terminal facility, pursuant to an agreement between the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region and the operator of video lottery gaming at Aqueduct racetrack, when such agreement is approved by the gaming commission and as long as such agreement is in place, and when such agreement is accompanied by a detailed spending plan for the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region, which includes a plan for the timely payment of liabilities due to the franchised corporation, and when such video lottery devices are hosted by the operator of video lottery gaming at Aqueduct racetrack on behalf of the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region in lieu of the development of a facility in Nassau county as authorized by paragraph three of subdivision a of this section. Such agreement reached by the parties shall identify the agency principally responsible for funding, approving or undertaking any actions of such agreement. Provided, however, nothing in this paragraph shall infringe upon the rights of the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region to develop a facility pursuant to paragraph three of this subdivision upon the expiration, termination, or withdrawal of such agreement.

(5) At a facility located in Orange county to be operated by the entity otherwise licensed to operate video lottery gaming at Monticello racetrack, provided that: (i) such licensed entity is no longer operating video lottery gaming at Monticello racetrack and provided that Monticello racetrack is conducting racing operations; (ii) such facility in Orange county is not sited within a thirty mile radius of the video lottery gaming facility at Yonkers racetrack; and (iii) the licensed

entity, its subsidiaries and affiliates, including the entity licensed to operate a commercial gaming facility in Sullivan county, and the entity licensed to operate video lottery gaming at Yonkers racetrack enter into a mitigation agreement, to be approved by the gaming commission, which shall include, but not be limited to, terms that require: (A) the operator of the facility in Orange county to make an annual payment to the entity licensed to operate video lottery gaming or commercial gaming at Yonkers racetrack to account for the effects that siting such facility in Orange county would likely have on the gross gaming revenue of the entity licensed to operate at Yonkers racetrack; (B) employment levels at the affected facilities; and (C) that upon expiration or termination of the agreement, the authority to operate video lottery gaming in Orange county shall cease. Notwithstanding any other provision of this subdivision, at no time shall an entity operating video lottery gaming in Orange county be permitted to apply for or receive a license to operate a commercial gaming facility in that county.

(6) Notwithstanding any other provision of law to the contrary, as a condition of the license to operate a video lottery gaming facility located in Orange county, such operator shall provide an annual certification to the New York state gaming commission that the staffing levels at a commercial gaming facility located in zone two, region one pursuant to section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law (or any successor commercial gaming facility located in said region) are no less than one thousand four hundred seventy-three full-time, permanent employees. In furtherance of and without limiting the foregoing, the licensee for the commercial gaming facility located in zone two, region one pursuant to section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law (or any successor commercial gaming facility located in such region) shall not conduct any mass, involuntary layoff events that would trigger worker adjustment and retraining notification (WARN) act notifications pursuant to article twenty-five-A of the labor law or otherwise result in the employment levels at such facility dropping below levels mandated by this section. For purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the facility for a minimum of thirty-five hours per week for not less than four consecutive

weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the facility for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

(7) The village of Monticello, Sullivan county, the town of Thompson, Sullivan county, and Sullivan county shall continue to receive assistance payments made pursuant to section fifty-four-1 of the state finance law.

b. Such rules and regulations shall provide, as a condition of licensure, that racetracks to be licensed are certified to be in compliance with all state and local fire and safety codes, that the gaming commission is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video lottery gaming operations as found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the gaming commission and such other terms and conditions of licensure as the gaming commission may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No entity licensed by the gaming commission operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months. Nothing in this section shall prohibit the gaming commission from licensing an entity to operate video lottery gaming at an existing racetrack as authorized in this subdivision whether or not a different entity is licensed to conduct horse racing and pari-mutuel wagering at such racetrack pursuant to article two or three of the racing, pari-mutuel wagering and breeding law.

The gaming commission shall establish standards for approval of the temporary and permanent physical layout and construction of any facility or building devoted to a video lottery gaming operation. In reviewing

such application for the construction or reconstruction of facilities related or devoted to the operation or housing of video lottery gaming operations, the gaming commission shall ensure that such facility:

(1) possesses superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(2) has adequate motor vehicle parking facilities to satisfy patron requirements.

(3) has a physical layout and location that facilitates access to and from the horse racing track portion of such facility to encourage patronage of live horse racing events that are conducted at such track.

c. The terminals authorized pursuant to paragraph four of subdivision a of this section shall:

(i) be deemed as operated by the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region for the purposes of section sixteen hundred twelve of this chapter and the distributions therefrom made as if the video lottery devices were located in Nassau county;

(ii) consist exclusively of electronic table games, unless otherwise approved by the gaming commission and the director of the division of the budget; and

(iii) be individually designated as hosted.

d. Notwithstanding any law, rule or regulation to the contrary, absent the enactment of sufficient alternative revenue sources for the franchised corporation in a chapter of law providing a statutory plan for the prospective not-for-profit governing structure of The New York Racing Association, Inc., any agreement for the operation of terminals authorized pursuant to paragraph four of subdivision a of this section shall require the operator of video lottery gaming at Aqueduct racetrack to maintain racing support for general thoroughbred racing operations and capital expenditures from video lottery gaming at Aqueduct racetrack, at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics.

e. Video lottery gaming shall only be permitted for no more than twenty consecutive hours per day and on no day shall such operation be conducted past 6:00 a.m.

f. The gaming commission shall promulgate such rules and regulations as may be necessary for the implementation of video lottery gaming in accordance with the provisions of this section and paragraph five of subdivision a of section sixteen hundred twelve of this article.

g. All workers engaged in the construction, reconstruction, development, rehabilitation, or maintenance of any area for the purpose of the installation, maintenance, or removal of video lottery gaming terminals shall be subject to the provisions of articles eight and nine of the labor law to the extent provided in such articles.

h. The gaming commission shall not approve the construction or alteration of any facility or building devoted to the operation or housing of video lottery gaming until the person or entity selected to operate such video lottery gaming shall have submitted to the gaming commission a statement of the location of the proposed facility or building, together with a plan of such racetrack, and plans of all existing buildings, seating stands and other structures on the grounds of such racetrack, in such form as the gaming commission may prescribe, and such plans shall have been approved by the gaming commission. The gaming commission, at the expense of the applicant, may order such engineering examination thereof as the gaming commission may deem necessary. Such construction or alteration may be made only with the approval of the gaming commission and after examination and inspection of the plans thereof and the issuance of a permit by the gaming commission.

i. (1) The gaming commission may administer a free play allowance program to offer players or prospective players of video lottery games free play credits for the purpose of increasing revenues earned by the video lottery gaming program for the support of education. For the purposes of this subdivision, "free play allowance credit" means a

specified dollar amount that (i) may be used by a player to play a video lottery game without paying any other consideration, and (ii) is not used in the calculation of total revenue wagered after payout of prizes.

(2) For each video lottery gaming facility, the gaming commission shall authorize the use of free play allowance credits if the operator of such facility submits a written plan for the use of the free play allowance that the gaming commission determines is designed to increase the amount of revenue earned by video lottery gaming at such facility for the support of education.

(3) For each video lottery facility, the annual value of the free play allowance credits authorized for use by the operator pursuant to this subdivision shall not exceed an amount equal to fifteen percent of the total amount wagered on video lottery games after payout of prizes. The gaming commission shall establish procedures to assure that free play allowance credits do not exceed such amount.

(4) The gaming commission, in conjunction with the director of the budget, may suspend the use of free play allowance credits authorized pursuant to this subdivision whenever they jointly determine that the use of free play allowance credits are not effective in increasing the amount of revenue earned for the support of education, and such use may not be resumed unless the operator of such facility submits a new or revised written plan for the use of the free play allowance that the gaming commission determines is designed more effectively to produce an increase in the amount of revenue earned by video lottery gaming at such facility for the support of education.

(5) Nothing in this subdivision shall be deemed to prohibit the operator of a video lottery facility from offering free play credits to players or prospective players of video lottery games when the value of such free play credits is included in the calculation of the total amount wagered on video lottery games and the total amount wagered after payout of prizes, and the operator of such facility pays the gaming commission the full amount due as the result of such calculations.

(6) The gaming commission may amend the contract with the provider of the central computer system that controls the video lottery network during the term of such contract in effect on the effective date of this subdivision to provide additional consideration to such provider in an amount determined by the gaming commission to be necessary to compensate

for (i) processing free play allowance transactions and (ii) system updates and modifications otherwise needed as of such effective date.

j. Every video lottery gaming license, and every renewal license, shall be valid for a period of five years, except that video lottery gaming licenses issued before the effective date of this subdivision shall be for a term expiring on the applicant's next birthday following June thirtieth, two thousand fourteen.

The gaming commission may decline to renew any license after notice and an opportunity for hearing if it determines that:

(1) the licensee has violated section one thousand six hundred seven of this article;

(2) the licensee has violated any rule, regulation or order of the gaming commission;

(3) the applicant or its officers, directors or significant stockholders, as determined by the gaming commission, have been convicted of a crime involving moral turpitude; or

(4) that the character or fitness of the licensee and its officers, directors, and significant stockholders, as determined by the gaming commission is such that the participation of the applicant in video lottery gaming or related activities would be inconsistent with the public interest, convenience or necessity or with the best interests of video lottery gaming generally.

k. The gaming commission, subject to notice and an opportunity for hearing, may revoke, suspend, and condition the license of the video lottery gaming licensee, order the video lottery gaming licensee to terminate the continued appointment, position or employment of officers and directors, or order the video lottery gaming licensee to require significant stockholders to divest themselves of all interests in the video lottery gaming licensee.

§ 1618. Special drawings. a. General. The division may hold special prize drawings each of which shall guarantee as a first prize to the winner or winners an amount of not less than fifty million dollars,

including interest, such prize to be paid in a manner which the director shall determine.

b. Reports. The division shall produce and issue a report, in such format as the director may prescribe, no more than sixty days after a prize drawing is held pursuant to subdivision a of this section. Such report shall include at a minimum the following information pertaining to such drawing: (1) sales revenue and prize distributions to include amounts available for future special drawings, (2) administrative costs paid or otherwise payable or distributed to agents, vendors and contractors, (3) an analysis of the effect on sales of other game drawings held during the period of time that tickets for a special prize drawing were available to the public. A copy of such report will be provided to the director of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 1620. Request for proposals required. a. In the event that the division determines to implement any on-line lottery game whether known as "Quick Draw" or by any other name, the division shall not acquire, whether by purchase, lease or otherwise, any equipment or services for the purpose of such game, except pursuant to a request for proposals. No contract existing prior to the effective date of this section, or any amendment of such contract during the initial term thereof, or during any extension of such term permitted by an option existing as of the effective date of this section, shall be subject to the provisions of this section.

b. Requests for proposals issued pursuant to this section shall be widely distributed to all responsible firms identified by the division as capable of providing similar equipment and services.

c. The division is hereby authorized to obtain criminal background information on any proposer for the purpose of determining whether such proposer has engaged in conduct which would be prejudicial to public confidence in the state lottery. In connection therewith, the division

shall require in its request for proposals each proposer to submit identifying information which may include fingerprints. Such information shall be required from each officer, director, principal, investor, owner, subcontractor, or employee of the proposer as the division deems appropriate unless the division makes a written finding that such information is not required to protect public confidence in the state lottery.

d. The division may, after providing notice and an opportunity for a hearing pursuant to the state administrative procedure act, disqualify any proposer which itself, or any officer, director, principal, investor, owner, subcontractor, or employee is found to have committed a felony under the laws of the United States or under the laws of the state of New York or any other state or foreign jurisdiction or any crime relating to gaming activities or public contracting, or which is otherwise found to have engaged in conduct which would be prejudicial to public confidence in the state lottery. If the division awards a contract to a person who has committed such a crime or engaged in such conduct the division shall submit to the comptroller a written finding explaining such award.

e. This section shall not apply to any equipment or services acquired through a governmental agency or instrumentality.

f. Prior to extending the initial term of contracts existing prior to the effective date of this section, the division shall update the criminal background information of the holders of such contracts; provided, however a contract existing as of the effective date of this section shall not be extended beyond the year two thousand two.

ARTICLE 36

COMPLIANCE AND ENFORCEMENT INITIATIVES

Section 1700. Voluntary disclosure and compliance program.

1701. Financial institution data match system for state tax collection purposes.

1703. Information returns relating to payments made in

settlement of payment card and third party network transactions.

§ 1700. Voluntary disclosure and compliance program. 1.

Notwithstanding the provisions of any other law to the contrary, there is hereby established a voluntary disclosure and compliance program, as described in this section, to be administered by the commissioner, for all eligible taxpayers as described in this section, owing any tax imposed or previously imposed under this chapter or administered by the commissioner.

2. For purposes of the voluntary disclosure and compliance program established under this section, an eligible taxpayer is an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person subject to a tax imposed by or pursuant to the authority of this chapter or any other law imposing administrative tax responsibilities on the commissioner and who meets the following criteria: (1) the taxpayer is not currently under audit by the department; (2) the taxpayer is one who is voluntarily disclosing a New York tax liability that the department has not determined, calculated, researched or identified at the time of the disclosure; (3) the taxpayer is not currently a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof; and (4) the taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York state reportable or listed transaction.

3. Under the voluntary disclosure and compliance program, upon execution of a voluntary disclosure and compliance agreement by the eligible taxpayer and the commissioner, the commissioner shall waive any applicable penalties (including the additional rate of interest prescribed under section eleven hundred forty-five of this chapter) for the following: (1) failure to pay any such tax liability; (2) failure to file a return or report with respect to any such tax liability; and (3) failure to pay estimated tax. In addition, no criminal action or

proceeding shall be brought against an eligible taxpayer relating to the tax liability covered by the agreement. This agreement shall not preclude the auditing of the returns filed to determine if those returns were completed in accordance with existing law and regulation. Intentional failure to pay all the taxes, plus related interest, pursuant to the voluntary disclosure and compliance agreement entered into between the taxpayer and the commissioner, shall invalidate any waiver of penalty, invalidate the forbearance of any administrative or criminal action or proceeding.

4. To participate in the voluntary disclosure and compliance program, an eligible taxpayer must apply by submitting a disclosure statement in the form and manner prescribed by the commissioner. The disclosure statement shall contain all the information the commissioner reasonably deems necessary to effectively administer the program. As long as all the requirements of the voluntary disclosure and compliance program are met, no application shall be denied solely because the taxpayer has admitted that the delinquency was the result of willful or fraudulent conduct. Except in instances where the taxpayer has failed to comply with the terms of a voluntary disclosure and compliance agreement, the commissioner shall not use the taxpayer's disclosure as evidence in any proceeding brought against the taxpayer or reveal the contents of the disclosure to any law enforcement or other agency. However, the disclosure of any returns or reports filed under this program with the secretary of the treasury of the United States, his or her delegates, or the proper tax officer of any state or city is permitted as otherwise provided for in this chapter.

5. (a) If the taxpayer and the tax liability are eligible under the voluntary disclosure and compliance program, the commissioner is authorized to enter into a voluntary disclosure and compliance agreement with the taxpayer. A voluntary disclosure and compliance agreement will be in a form to be established by the commissioner and include such terms as the commissioner may reasonably require to satisfy the taxpayer's disclosed tax obligations and enable and require the taxpayer to comply with the tax law in the future. The taxpayer must pay the tax and the related interest that are the subject of the voluntary

disclosure and compliance agreement when the agreement is executed or within the time stated on a bill issued to the taxpayer by the commissioner. In the event the commissioner is satisfied that the taxpayer cannot make immediate full payment of the disclosed tax liability, the commissioner may enter into an installment payment program with the taxpayer for the payment of the tax and interest due. The commissioner may require a financial disclosure statement setting forth information concerning the taxpayer's current assets, liabilities, earnings, and other financial information before entering into an installment payment plan with the taxpayer. In addition to any other information and terms that the commissioner determines are appropriate, the voluntary disclosure and compliance agreement shall provide that, if the taxpayer complies with the terms of the compliance agreement, the taxpayer will not be subject to any criminal tax prosecution in New York state for the conduct disclosed by the taxpayer.

(b) If the taxpayer intentionally provides false material information or omits material information in his or her submissions to the commissioner, or attempts to intentionally defeat or evade a tax due pursuant to the agreement executed under this article, or intentionally fails to comply with the terms of the compliance agreement, such agreement shall be deemed rescinded.

6. Unless the commissioner on his or her own motion redetermines the amount of tax due, including applicable interest, no refund shall be granted or credit allowed with respect to any taxes, including applicable interest, paid under this program.

7. The commissioner may promulgate regulations, issue forms and instructions, and take any and all other actions necessary to implement the provisions of the program established under this section. The commissioner shall publicize the program provided for in this section so as to maximize public awareness of and participation in such program.

8. For purposes of this section, the term "taxpayer" includes any person required to collect any of the taxes specified in subdivision one of this section.

9. The voluntary disclosure and compliance application, the disclosure statement, the voluntary disclosure and compliance agreement, and other documents filed by an eligible taxpayer pursuant to the program established by this section are deemed to be reports and returns:

(a) subject to the secrecy provisions of this chapter in the same manner and to the same extent as if such documents were referred to in any of the secrecy provisions of this chapter; and

(b) for purposes of the criminal provisions of article thirty-seven of this chapter.

§ 1701. Financial institution data match system for state tax collection purposes. 1. Definitions. As used in this section:

* (a) "Debt" means past-due tax liabilities, including unpaid tax, interest, and penalty, that the commissioner is required by law to collect and that have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review.

* NB Effective until April 1, 2030

* (a) "Debt" means all liabilities, including unpaid tax, interest, and penalty, that the commissioner is required by law to collect and that have been reduced to judgment by the docketing of a New York state tax warrant in the office of a county clerk located in the state of New York or by the filing of a copy of the warrant in the office of the department of state.

* NB Effective April 1, 2030

(b) "Tax debtor" means a natural person or any entity other than a natural person named on a New York state tax warrant and identified thereon as a judgment debtor.

(c) "Financial institution" means (i) any financial institution authorized or required to participate in a financial institution data match system or program for child support enforcement purposes under federal or state law, and (ii) any virtual currency business licensed by the superintendent of financial services.

2. Financial institution data match system for state tax collection purposes. * (a) To assist the commissioner in the collection of debts, the department must develop and operate a financial institution data

match system for the purpose of identifying and seizing the non-exempt assets of tax debtors as identified by the commissioner. The commissioner is authorized to designate a third party to develop and operate this system. Notwithstanding any other provisions of this chapter, the commissioner is authorized to disclose the debt and the debtor information to such third party and to financial institutions for purposes of this system. Any third party designated by the commissioner to develop and operate a financial data match system must keep all information it obtains from both the department and the financial institution confidential, and any employee, agent or representative of that third party is prohibited from disclosing that information to anyone other than the department or the financial institution.

* NB Effective until April 1, 2030

* (a) To assist the commissioner in the collection of debts, the department must develop and operate a financial institution data match system for the purpose of identifying and seizing the non-exempt assets of tax debtors as identified by the commissioner. The commissioner is authorized to designate a third party to develop and operate this system. Any third party designated by the commissioner to develop and operate a financial data match system must keep all information it obtains from both the department and the financial institution confidential, and any employee, agent or representative of that third party is prohibited from disclosing that information to anyone other than the department or the financial institution.

* NB Effective April 1, 2030

(b) Each financial institution doing business in the state must, in conjunction with the commissioner or the commissioner's authorized designee, develop and operate a data match system to facilitate the identification and seizure of non-exempt financial assets of tax debtors identified by the commissioner or the commissioner's authorized designee. If a financial institution has a data match system developed or used to administer the child support enforcement programs of this state, and if that system is approved by the commissioner or the commissioner's authorized designee, the financial institution may use that system to comply with the provisions of this section.

3. Each financial institution must provide identifying information

each calendar quarter to the department for each tax debtor identified by the department who or that maintains an account at the institution. The identifying information must include the tax debtor's name, address, and social security number or other taxpayer identification number, and all account numbers and balances in each account.

4. A financial institution that complies with this section will not be liable under state law to any person for the disclosure of information to the commissioner or the commissioner's authorized designee, or any other action taken in good faith to comply with this section.

5. Both the financial institution furnishing a report to the commissioner under this section and the commissioner's authorized designee are prohibited from disclosing to the tax debtor that the name of the tax debtor has been received from or furnished to the commissioner, unless authorized in writing by the commissioner to do so. A violation of this subdivision will result in the imposition of a civil penalty equal to the greater of one thousand dollars or the amount in the account of the person to whom the disclosure was made for each instance of unauthorized disclosure by the financial institution. That civil penalty can be assessed and collected under this chapter as if that penalty were tax.

6. A financial institution may disclose to its depositors or account holders that the department has the authority to request certain identifying information on certain depositors or account holders under the financial institution data match system for state tax collection purposes.

§ 1703. Information returns relating to payments made in settlement of payment card and third party network transactions. 1. (a) Every payment settlement entity, third party settlement organization, electronic payment facilitator or other third party acting on behalf of a payment settlement entity, all as defined in section 6050W of the internal revenue code and referred to herein as "a reporting entity," required to file information returns pursuant to that section shall, within thirty

days of the filing thereof, file with the department in such form and manner as prescribed by the commissioner either (i) a duplicate of all such information returns or (ii) a duplicate of such information returns related to participating payees, as defined in section 6050W of the internal revenue code, with a New York state address or New York state taxpayers. The commissioner may require that such returns be filed electronically.

(b) To facilitate accurate reporting by the entities required to file information returns pursuant to this section, the department shall provide a list or database of New York state taxpayers no later than forty-five days prior to the information reporting deadline, in such form and manner as prescribed by the commissioner. The information included in such list or database shall not be used by a reporting entity for any purpose other than producing and filing information returns pursuant to this section.

(c) Any information received by the department on an information return filed pursuant to this section, concerning a person who is not subject to tax in New York, or is not subject to any requirement imposed by or pursuant to the authority of this chapter, may not be used by the department. The department shall not redisclose any information received on an information return filed pursuant to this section, except that it may disclose to the commissioner of finance of the city of New York, for the purpose of the administration of laws relating to taxes or charges collected by the commissioner of finance of the city of New York, information received on such returns concerning any person or entity with a New York city address or that is a New York city taxpayer or that is required to pay New York city taxes and/or charges or that is subject to any reporting requirement pursuant to New York city tax laws.

2. (a) Any reporting entity failing to file an information return required pursuant to subdivision one of this section within the time prescribed will be subject to a penalty of fifty dollars for each failure, if failure is for not more than one month, with an additional fifty dollars for each month or fraction thereof during which each failure continues. However, the total amount of penalty imposed on a reporting entity may not exceed two hundred fifty thousand dollars annually.

(b) The commissioner may waive all or any portion of any penalty imposed by this subdivision with respect to any violation if (i) the commissioner determines that the failure to timely file a return, was due to reasonable cause and not due to willful neglect, or (ii) rescinding the penalty would promote compliance with the requirements of this chapter and effective tax administration.

ARTICLE 37

CRIMES AND OTHER OFFENSES, SEIZURES AND FORFEITURES

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PART I - DEFINITIONS

Section 1800. Definitions.

§ 1800. Definitions.--(a) As used in this article, the term "person" shall include, but shall not be limited to, an individual, corporation (including a dissolved corporation), partnership, limited liability company, association, trust or estate.

(b) As used in this article, the term "person" shall also include an officer, employee or agent of a corporation; a member, manager, employee or agent of a partnership, limited liability company or association; an employee or agent of an individual proprietorship; an employee or agent of an estate or trust; or a fiduciary.

(c) As used in this article, the term "felony" and the term "misdemeanor" shall have the same meaning as they have in the penal law, and the disposition of such offenses and the sentences imposed therefor shall be as provided in such law except; (1) notwithstanding the provisions of paragraph a of subdivision one of section 80.00 and paragraph (a) of subdivision one of section 80.10 of the penal law relating to the fine for a felony, the court may impose a fine not to exceed the greater of double the amount of the underpaid tax liability resulting from the commission of the crime or fifty thousand dollars, or, in the case of a corporation the fine may not exceed the greater of double the amount of the underpaid tax liability resulting from the commission of the crime or two hundred fifty thousand dollars and (2) notwithstanding the provisions of subdivision one of section 80.05 and paragraph (b) of subdivision one of section 80.10 of the penal law relating to the fine for a class A misdemeanor, the court may impose a fine not to exceed ten thousand dollars, except that in the case of a corporation the fine may not exceed twenty thousand dollars.

(d) As used in this article, the term "related statute" means any tax imposed by any law, ordinance or resolution enacted pursuant to the authority of this chapter or article two-E of the general city law, while such article two-E shall remain in full force and effect, and administered by the tax commission.

(e) As used in this article, the term "related income or earnings tax statute" means any law, ordinance or resolution imposed pursuant to the authority of article thirty, thirty-a or thirty-b of this chapter or

article two-E of the general city law, while such article two-E shall remain in full force and effect.

PART II-TAX FRAUD ACTS AND PENALTIES

Section 1801. Tax fraud acts.

1802. Criminal tax fraud in the fifth degree.

1803. Criminal tax fraud in the fourth degree.

1804. Criminal tax fraud in the third degree.

1805. Criminal tax fraud in the second degree.

1806. Criminal tax fraud in the first degree.

1807. Aggregation.

1808. Personal income and earnings taxes; repeated failure to file.

1809. Corporate taxes; repeated failure to file.

§ 1801. Tax fraud acts. (a) As used in this article, "tax fraud act" means willfully engaging in an act or acts or willfully causing another to engage in an act or acts pursuant to which a person:

(1) fails to make, render, sign, certify, or file any return or report required under this chapter or any regulation promulgated under this chapter within the time required by or under the provisions of this chapter or such regulation;

(2) knowing that a return, report, statement or other document under this chapter contains any materially false or fraudulent information, or omits any material information, files or submits that return, report, statement or document with the state or any political subdivision of the state, or with any public office or public officer of the state or any political subdivision of the state;

(3) knowingly supplies or submits materially false or fraudulent information in connection with any return, audit, investigation, or proceeding or fails to supply information within the time required by or under the provisions of this chapter or any regulation promulgated under this chapter;

(4) engages in any scheme to defraud the state or a political subdivision of the state or a government instrumentality within the

state by false or fraudulent pretenses, representations or promises as to any material matter, in connection with any tax imposed under this chapter or any matter under this chapter;

(5) fails to remit any tax collected in the name of the state or on behalf of the state or any political subdivision of the state when such collection is required under this chapter;

(6) fails to collect any tax required to be collected under articles twelve-A, eighteen, twenty, twenty-two, twenty-eight or twenty-eight-A of this chapter, or pursuant to the authority of article twenty-nine of this chapter;

(7) with intent to evade any tax fails to pay that tax; or

(8) issues an exemption certificate, interdistributor sales certificate, resale certificate, or any other document capable of evidencing a claim that taxes do not apply to a transaction, which he or she does not believe to be true and correct as to any material matter, which omits any material information, or which is false, fraudulent, or counterfeit; or

(9) (a) knowingly fails to collect or remit any taxes imposed by section four hundred ninety-three of this chapter on the sale of any adult-use cannabis product; or (b) knowingly possesses for sale, as such term is defined in section four hundred ninety-two of this chapter, any such product on which the tax required to be paid under subdivision (a) of such section has not been paid.

(b) For purposes of this subdivision, "this chapter" includes any "related statute" or any "related income or earnings tax statute", as defined in section eighteen hundred of this article.

(c) For purposes of this subdivision, the term "willfully" shall be defined to mean acting with either intent to defraud, intent to evade the payment of taxes or intent to avoid a requirement of this chapter, a lawful requirement of the commissioner or a known legal duty.

§ 1802. Criminal tax fraud in the fifth degree. A person commits criminal tax fraud in the fifth degree when he or she commits a tax fraud act. Criminal tax fraud in the fifth degree is a class A misdemeanor.

§ 1803. Criminal tax fraud in the fourth degree. A person commits criminal tax fraud in the fourth degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under this chapter, or to defraud the state or any subdivision thereof, the person pays the state and/or a political subdivision of the state (whether by means of underpayment or receipt of refund or both), in a period of not more than one year in excess of three thousand dollars less than the tax liability that is due. Criminal tax fraud in the fourth degree is a class E felony.

§ 1804. Criminal tax fraud in the third degree. A person commits criminal tax fraud in the third degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under this chapter, or to defraud the state or any political subdivision of the state, the person pays the state and/or a political subdivision of the state (whether by means of underpayment or receipt of refund or both), in a period of not more than one year in excess of ten thousand dollars less than the tax liability that is due. Criminal tax fraud in the third degree is a class D felony.

§ 1805. Criminal tax fraud in the second degree. A person commits criminal tax fraud in the second degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under this chapter, or to defraud the state or any subdivision of the state, the person pays the state and/or a political subdivision of the state (whether by means of underpayment or receipt of refund or both), in a period of not more than one year in excess of fifty thousand dollars less than the tax liability that is due. Criminal tax fraud in the second degree is a class C felony.

§ 1806. Criminal tax fraud in the first degree. A person commits criminal tax fraud in the first degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under this

chapter, or to defraud the state or any subdivision of the state, the person pays the state and/or a political subdivision of the state (whether by means of underpayment or receipt of refund or both), in a period of not more than one year in excess of one million dollars less than the tax liability that is due. Criminal tax fraud in the first degree is a class B felony.

§ 1807. Aggregation. For purposes of this article, the payments due and not paid under a single article of this chapter pursuant to a common scheme or plan or due and not paid, within one year, may be charged in a single count, and the amount of underpaid tax liability incurred, within one year, may be aggregated in a single count.

§ 1808. Personal income and earnings taxes; repeated failure to file.
(a) Any person who, with intent to evade payment of any tax imposed under article twenty-two of this chapter or any related income or earnings tax statute, fails to file a return for three consecutive taxable years shall be guilty of a class E felony, provided that such person had an unpaid tax liability with respect to each of the three consecutive taxable years.

(b) In any prosecution for a violation of subdivision (a) of this section, it shall be a defense that the defendant had no unpaid tax liability for any of the three consecutive taxable years.

(c) As used in this subdivision, the term "return" shall mean a return required under section six hundred fifty-one of this chapter, section 11-1751 of the administrative code of the city of New York or section 92-85 or 92-105 of the codes and ordinances of the city of Yonkers. It shall not include any information return referred to in subsection (i) of section six hundred fifty-one of this chapter, or subdivision (i) of section 11-1751 of such code, or subdivision (g) of section 92-105 of such codes and ordinances, or section six hundred fifty-eight of this chapter or section 11-1758 of such code or section 92-111 of such codes and ordinances, or any employer's return required by section six hundred seventy-four of this chapter or section 11-1774 of such code.

§ 1809. Corporate taxes; repeated failure to file. (a) Any person who, with intent to evade payment of any tax imposed under article nine, nine-A, thirteen, thirty-three or thirty-three-A of this chapter, fails to file a return or report for three consecutive taxable years shall be guilty of a class E felony, provided that such person had an unpaid tax liability, in excess of the threshold amount with respect to each of the three consecutive taxable years. The threshold amount in the case of a taxable year under article nine-A of this chapter ending after June thirtieth, nineteen hundred eighty-nine is the applicable fixed dollar minimum prescribed under paragraph (d) of subdivision one of section two hundred ten of this chapter. In the event such fixed dollar minimum is less than two hundred fifty dollars, the threshold amount in the case of such taxable year is two hundred fifty dollars. In all other cases the threshold amount is two hundred fifty dollars.

(b) In any prosecution for a violation of subdivision (a) of this section, it shall be a defense that the defendant had no unpaid tax liability for any of the three consecutive taxable years.

(c) As used in this section, the terms "return" and "report" shall mean a return or report required under section one hundred ninety-two, two hundred eleven, two hundred ninety-four, fifteen hundred fifteen or fifteen hundred fifty-four of this chapter. It shall not include any return or report referred to in section one hundred ninety-seven-a, two hundred thirteen-a, or fifteen hundred thirteen of this chapter.

PART III - OTHER TAXES

Section 1811. Estate, gift and transfer taxes.

1812. Motor fuel taxes.

1812-a. Person not registered as distributor of Diesel motor fuel.

1812-b. Person not registered as distributor.

1812-c. Person not licensed as terminal operator.

1812-d. Person not licensed as transporter.

1812-e. Person not registered as a residual petroleum product business.

1812-f. Article thirteen-A tax.

- 1812-g. Person not registered as a wholesaler of motor fuel.
- 1813. Alcoholic beverage tax.
- 1814. Cigarette and tobacco products tax.
- 1814-a. Person not appointed as a tobacco products distributor.
- 1815. Highway use and fuel use taxes.
- 1817. Sales and compensating use taxes.
- 1818. Real estate transfer tax.
- 1820. Authorized combative sports tax.
- 1821. Medallion taxicab owners tax in the metropolitan
commuter transportation district.
- 1822. Violation of the state assessment fee on transportation
network company prearranged trips.

§ 1811. Estate, gift and transfer taxes. Wrongful entry into safe deposit box.--Any person who enters a safe deposit box of a decedent, or a box standing in the joint names of such a decedent and one or more persons, with knowledge of the death of the lessee of such box, which entry results in an evasion of the tax imposed by article twenty-six of this chapter shall be guilty of a misdemeanor.

§ 1812. Motor fuel taxes.--(a) Attempt to evade or defeat tax.--Any person who willfully attempts in any manner to evade or defeat any tax imposed by article twelve-A of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a class E felony.

(b) Any person who willfully accepts an exempt transaction certificate (or similar document which has been prescribed by the commissioner) or interdistributor sale certificate with respect to claiming exemption from the taxes imposed on Diesel motor fuel by article twelve-A of this chapter which he does not believe to be true and correct as to any material matter shall, in addition to any other penalty provided by law, be guilty of a misdemeanor.

(c) Any owner of a filling station who shall willfully and knowingly have in his or her custody, possession or under his or her control any motor fuel or Diesel motor fuel (1) on which the taxes imposed by or

pursuant to the authority of such article have not been assumed or paid by a distributor registered as such under such article, (2) on which the taxes imposed by or pursuant to the authority of such article have not been included in the cost to him or her of such fuel where such taxes were required to have been passed through to him or her and included in the cost to him or her of such fuel, or (3) which is dyed diesel motor fuel as defined by subdivision eighteen-a of section two hundred eighty-two of this chapter (except for water-white kerosene), shall be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in his or her custody, possession or under his or her control any motor fuel or Diesel motor fuel on which such taxes have not been assumed or paid by a distributor registered as such where such owner has knowledge of the requirement that such taxes be paid and where, to his or her knowledge, such taxes have not been assumed or paid by a registered distributor on such motor fuel or Diesel motor fuel. Such owner shall willfully and knowingly have in his or her custody, possession or under his or her control any motor fuel or Diesel motor fuel on which such taxes are required to have been passed through to him or her and have not been included in his or her cost where such owner has knowledge of the requirement that such taxes be passed through and where to his knowledge such taxes have not been so included. Such owner shall willfully and knowingly have in his or her custody, possession or under his or her control any dyed diesel motor fuel (except water-white kerosene) where such owner has knowledge of the requirement that dyed diesel motor fuel (except water-white kerosene) may not be in his or her custody, possession or under his or her control.

(d) Any willful act or omission, other than those described in subdivision (a), (b), or (c) of this section, by any person which constitutes a violation of any provision of article twelve-A of this chapter shall constitute a misdemeanor.

(e) Any person who willfully makes a manifest required by section two hundred eighty-six-b of this chapter which he does not believe to be true and correct as to every material matter or who willfully produces any manifest for inspection as required under section two hundred eighty-six-b of this chapter which is known to be fraudulent or to be false as to any material matter shall be guilty of a class E felony.

§ 1812-a. Person not registered as distributor of Diesel motor fuel.

(a) Any person who, while not registered as a distributor of Diesel motor fuel pursuant to the provisions of article twelve-A of this chapter, makes a sale or use within the state of Diesel motor fuel (other than a retail sale not in bulk or the self-use of Diesel motor fuel which has been the subject of a retail sale), imports or causes Diesel motor fuel to be imported into the state or produces, refines, manufactures or compounds Diesel motor fuel within the state shall be guilty of a misdemeanor. If, within any ninety day period, two thousand nine hundred gallons or more of Diesel motor fuel are subjected to sale or use (other than a retail sale not in bulk or the self-use of Diesel motor fuel which has been the subject of a retail sale) within the state or are imported or caused to be imported by any person while not so registered as a distributor of Diesel motor fuel, such person shall be guilty of a class E felony.

(b) Any person whose registration under article twelve-A of this chapter applies only to the importation, sale and distribution of Diesel motor fuel for use other than on a public highway as described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter who delivers non-highway Diesel motor fuel at a filling station or into a repository equipped with a hose or other apparatus by which non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle, other than such a repository which is located on the premises of such registrant where the Diesel motor fuel delivered therein is used exclusively for the purpose of fueling motor vehicles operated by registrant for the purpose of distributing Diesel motor fuel for the purposes described in such subparagraph (i), shall be guilty of a misdemeanor. If, within any ninety day period, any such person whose registration under article twelve-A of this chapter applies only to the importation, sale and distribution of non-highway Diesel motor fuel for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter so unlawfully delivers a total of one thousand gallons or more of Diesel motor fuel at such filling station or stations or into such repository or repositories (or a

combination of both such filling stations and repositories), then, such person shall be guilty of a class E felony.

(c) Any person who has twice been convicted under this section shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of Diesel motor fuel involved in such violation. For purposes of this section, the terms "non-highway Diesel motor fuel" and "retail sale not in bulk" shall have the same meaning they have for purposes of article twelve-A of this chapter.

§ 1812-b. Person not registered as distributor. Any person who, while not registered as a distributor of motor fuel pursuant to the provisions of article twelve-A of this chapter, imports or causes to be imported any motor fuel into the state, for use, distribution, storage or sale within the state, except motor fuel delivered into the ordinary fuel tank connected to the engine of a means of conveyance in order to propel it or in a small drum or similar container, or produces, refines, manufactures or compounds motor fuel within the state shall be guilty of a misdemeanor. If, within any ninety day period, two thousand nine hundred gallons or more of motor fuel are imported or caused to be imported into the state for use, distribution, storage or sale within the state or are produced, refined, manufactured or compounded within the state by any person while not registered as a distributor of motor fuel, such person shall be guilty of a class E felony. Provided further, that any person who has twice been convicted under this section shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of motor fuel involved in such violation.

§ 1812-c. Person not licensed as terminal operator. Any person who, while not licensed as such pursuant to the provisions of article twelve-A of this chapter, operates as a terminal operator as defined in subdivision thirteen of section two hundred eighty-two of this chapter, except where all of the motor fuel or diesel motor fuel stored in the storage facility is solely for such person's own use and consumption, shall be guilty of a class E felony.

§ 1812-d. Person not licensed as transporter. (a) Any person who, while not licensed as importing transporter pursuant to the provisions of article twelve-A of this chapter, transports motor fuel in the state which is being imported into the state for use, distribution, storage or sale in the state, shall be guilty of a misdemeanor.

(b) Any person who, while not licensed as an importing transporter pursuant to the provisions of article twelve-A of this chapter, off-loads motor fuel into a facility located within the state where such motor fuel is being imported into the state for use, distribution, storage or sale in the state, shall be guilty of a misdemeanor. Provided, however, any person who, while not licensed as an importing transporter pursuant to the provisions of article twelve-A of this chapter, off-loads two thousand nine hundred gallons or more of motor fuel in a thirty day period into a facility located within the state where such motor fuel is being imported into the state for use, distribution, storage or sale in the state, shall be guilty of a class E felony.

(c) Any person who, while not licensed as an exporting transporter pursuant to the provisions of article twelve-A of this chapter, transports motor fuel in this state where such fuel is being exported from a point in this state to without the state, shall be guilty of a misdemeanor.

§ 1812-e. Person not registered as a residual petroleum product business. Any person who, while not registered as a residual petroleum product business pursuant to the provisions of article thirteen-A of this chapter, imports or causes any residual petroleum product to be imported into the state, or produces, refines, manufactures or compounds residual petroleum product within the state, or makes a sale or use of residual petroleum product within the state (other than a self-use of residual petroleum product which has been the subject of a retail sale to such person) shall be guilty of a misdemeanor. Provided, however, if the tax liability with respect to such product under such article thirteen-A is equal to or greater than one thousand dollars, then such person shall be guilty of a class E felony. Provided, further, if,

within any ninety-day period, residual petroleum product is imported or caused to be imported into this state or produced, refined, manufactured, or compounded within the state or sold or used (other than a self-use of residual petroleum product which has been the subject of a retail sale to such person) by any person while not so registered as a residual petroleum product business and the tax liability under such article thirteen-A with respect to such product so imported, caused to be imported or produced, refined, manufactured, or compounded during such ninety-day period totals one thousand dollars or more, then such person shall be guilty of a class E felony.

§ 1812-f. Article thirteen-A tax. (a) Any person who willfully accepts an exempt transaction certificate (or similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate with respect to claiming exemption from the taxes imposed with respect to diesel motor fuel or residual petroleum product by article thirteen-A of this chapter which he does not believe to be true and correct as to any material matter shall be guilty of a misdemeanor.

(b) Any willful act or omission, other than those described in section eighteen hundred one of this article or subdivision (a) or (c) of this section, by any person which constitutes a violation of any provision of article thirteen-A of this chapter shall constitute a misdemeanor.

(c) Any person who willfully makes a movement tracking document required pursuant to subdivision (b) of section three hundred fifteen of this chapter, which he does not believe to be true and correct as to every material matter or who willfully produces any such document for inspection as required under subdivision (b) of section three hundred fifteen of this chapter which he knows to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor; provided, however, that if the tax liability under article thirteen-A of this chapter with respect to the product being transported, is equal to or greater than one thousand dollars, such person shall be guilty of a class E felony.

§ 1812-g. Person not registered as a wholesaler of motor fuel. Any person who, while not registered as a wholesaler of motor fuel pursuant to the provisions of article twelve-A of this chapter, makes a sale of motor fuel in this state other than a retail sale not in bulk, shall be guilty of a class E felony.

§ 1813. Alcoholic beverage tax.--(a) Unlawful use of stamps.--Any person who shall counterfeit stamps prescribed by section four hundred thirty-eight of this chapter or who shall willfully remove or alter or knowingly permit to be removed or altered, the cancellation or defacing marks required to be placed upon any stamp under provisions of article eighteen of this chapter with intent to use such stamp, or who shall willfully open any container of alcoholic beverages without first destroying the stamp affixed thereto or who shall knowingly or willfully buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp shall be guilty of a misdemeanor.

(b) Unlawful use of alcoholic beverages.--Any person who shall willfully sell or use any alcoholic beverages upon which tax has not been paid by the affixation of stamps as prescribed pursuant to section four hundred thirty-eight of this chapter shall be guilty of a misdemeanor.

(c) Any willful act or omission, other than those described in section eighteen hundred one of this article or subdivision (a) or (b) of this section, by any person which constitutes a violation of any provision of article eighteen of this chapter shall constitute a misdemeanor.

(d) The provisions of this section shall apply for purposes of any tax imposed pursuant to the authority of section four hundred forty-five of this chapter.

(e) Person not registered as a distributor. (1) Any person required to be registered as a distributor pursuant to the provisions of article eighteen of this chapter who, while not so registered, knowingly imports or causes to be imported into the state, for sale or use therein, any liquors or, who, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter, knowingly produces, distills, manufactures, compounds, mixes or

ferments in this state any such liquors for sale, or who, as a purchaser of a warehouse receipt, knowingly causes liquors covered by such receipt to be removed from a warehouse in this state, shall be guilty of a class A misdemeanor. Provided, however, that any person who has twice been convicted under this section within the preceding five years, shall be guilty of a class E felony for any subsequent violation of this paragraph.

(2) Any person who, while not registered as a distributor pursuant to the provisions of article eighteen of this chapter, knowingly and intentionally imports or causes to be imported into this state, for sale or use therein, more than three hundred sixty liters of liquors into this state in a one-year period or, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter, knowingly and intentionally produces, distills, manufactures, compounds, mixes or ferments for sale more than three hundred sixty liters of such liquors within this state in a one-year period, or, as a purchaser of a warehouse receipt, knowingly and intentionally causes more than three hundred sixty liters of liquors in a one-year period to be removed from a warehouse in this state, shall be guilty of a class E felony.

(3) For purposes of this subdivision, it shall be presumed that the importation or the causing to be imported into this state or the production, distillation, manufacture, compounding, mixing or fermenting in this state of more than ninety liters of such liquors by any person in a one-year period is for purposes of sale. Such presumption may be rebutted by the introduction of substantial evidence to the contrary.

(f) Person not registered as a distributor for city purposes. (1) Any person required to be registered as a distributor for city purposes pursuant to the provisions of section four hundred forty-five of article eighteen of this chapter who, while not so registered, knowingly imports or causes to be imported into such city, for sale or use therein, any liquors or, who, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter as incorporated into such section four hundred forty-five, knowingly produces, distills, manufactures, compounds, mixes or ferments in such city any such liquors for sale, or who, as a purchaser of a warehouse receipt, causes liquors covered by such receipt to be removed

from a warehouse in this state, shall be guilty of a class A misdemeanor. Provided, however, that any person who has twice been convicted under this section within the preceding five years shall be guilty of a class E felony for any subsequent violation of this paragraph.

(2) Any person who, while not registered as a distributor for city purposes pursuant to the provisions of section four hundred forty-five of article eighteen of this chapter, knowingly and intentionally imports or causes to be imported into such city, for sale or use therein, more than three hundred sixty liters of liquors into such city in a one-year period or, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter as incorporated into such section four hundred forty-five, knowingly and intentionally produces, distills, manufactures, compounds, mixes or ferments for sale more than three hundred sixty liters of such liquors within such city in a one-year period, or, as a purchaser of a warehouse receipt, knowingly and intentionally causes more than three hundred sixty liters of liquors in a one-year period to be removed from a warehouse in this state, shall be guilty of a class E felony.

(3) For purposes of this subdivision, it shall be presumed that the importation or the causing to be imported into such city or the production, distillation, manufacture, compounding, mixing or fermenting in such city of more than ninety liters of liquors by any person in a one-year period is for purposes of sale. Such presumption may be rebutted by the introduction of substantial evidence to the contrary.

(g) Any person, other than the distributor registered under article eighteen of this chapter which imported or caused the liquors to be imported into this state, who shall willfully and knowingly have in his custody, possession or under his control liquors with respect to which the taxes imposed by or pursuant to the authority of article eighteen of this chapter have not been assumed or paid by a distributor registered as such under such article, shall be guilty of a class B misdemeanor; if such person shall willfully and knowingly have more than ninety liters of such liquors in his custody or possession or under his control, such person shall be guilty of a class A misdemeanor; or if such person shall knowingly and intentionally have more than three hundred sixty liters of such liquors in his custody or possession or under his control, such

person shall be guilty of a class E felony. For purposes of this subdivision, such person shall willfully and knowingly have in his custody, possession or under his control any liquors with respect to which such taxes have not been assumed or paid by a distributor registered as such where such person has knowledge of the requirement of such taxes and where, to his knowledge, such taxes have not been assumed or paid by a registered distributor with respect to such liquors.

§ 1814. Cigarette and tobacco products tax.--(a) Any person who willfully attempts in any manner to evade or defeat the taxes imposed by article twenty of this chapter or payment thereof on (i) ten thousand cigarettes or more, (ii) twenty-two thousand cigars or more, (iii) four hundred forty pounds of tobacco or more, or (iv) six thousand six hundred units of alternative nicotine products or more, or has previously been convicted two or more times of a violation of paragraph one of this subdivision shall be guilty of a class E felony.

(b) Any person, other than an agent licensed by the commissioner, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax imposed by section four hundred seventy-one of this chapter, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of article twenty of this chapter shall be guilty of a misdemeanor. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class E felony.

(c) (1) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale ten thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale ten thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class E felony.

(2) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale thirty

thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale thirty thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class D felony.

(d) For the purposes of this section, the possession or transportation within this state by any person, other than an agent, at any one time of five thousand or more cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by section four hundred seventy-one of this chapter. With respect to such possession or transportation any provisions of article twenty of this chapter providing for a time period during which a use tax imposed by such article may be paid on unstamped cigarettes or unlawfully or improperly stamped cigarettes or during which such cigarettes may be returned to an agent shall not apply. The possession within this state of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by article twenty of this chapter.

(e) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, or lawfully transporting or storing tobacco products, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes or possession or control of tobacco products, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

(f) Any willful act or omission, other than those described in section eighteen hundred one of this article or subdivision (a), (b), (c), (d), (e), (g), (h) or (i) of this section, by any person which constitutes a violation of any provision of article twenty of this chapter shall

constitute a misdemeanor.

(g) Any person who falsely or fraudulently makes, alters or counterfeits any stamp prescribed by the tax commission under the provisions of article twenty of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possesses any cigarettes in packages bearing any such false, altered or counterfeited stamp, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp, prescribed by the tax commission under the provisions of article twenty of this chapter, or who knowingly and willfully possesses any such device, shall be guilty of a class E felony. For the purposes of this subdivision, the words "stamp prescribed by the tax commission" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by such commission.

(h) (1) Any dealer, other than a distributor appointed by the commissioner of taxation and finance under article twenty of this chapter, who shall knowingly transport or have in their custody, possession or under their control more than ten pounds of tobacco, more than five hundred cigars, or more than one hundred fifty units of alternative nicotine products, upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner of taxation and finance under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days.

(2) Any person, other than a dealer or a distributor appointed by the commissioner under article twenty of this chapter, who shall knowingly transport or have in their custody, possession or under their control more than fifteen pounds of tobacco, more than seven hundred fifty cigars, or more than two hundred twenty-five units of alternative nicotine products, upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner under article twenty of this chapter, or other person

treated as a distributor pursuant to section four hundred seventy-one-d of this chapter shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days.

(3) Any person, other than a distributor appointed by the commissioner under article twenty of this chapter, who shall knowingly transport or have in their custody, possession or under their control twenty-five hundred or more cigars, fifty or more pounds of tobacco, or seven hundred fifty units or more of alternative nicotine products, upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter shall be guilty of a misdemeanor. Provided further, that any person who has twice been convicted under this subdivision shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of tobacco products involved in such violation.

(4) For purposes of this subdivision, such person shall knowingly transport or have in their custody, possession or under their control tobacco, cigars, or alternative nicotine products, on which such taxes have not been assumed or paid by a distributor appointed by the commissioner where such person has knowledge of the requirement of the tax on tobacco products and, where to their knowledge, such taxes have not been assumed or paid on such tobacco products by a distributor appointed by the commissioner of taxation and finance.

(i) Any person who falsely or fraudulently makes, alters or counterfeits a registration certificate or sticker required under the provisions of section four hundred eighty-a of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such registration certificate or sticker, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited registration certificate or sticker, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any registration certificate or sticker required under the provisions of such section, or who knowingly and willfully possesses any such device, shall be guilty of a class B misdemeanor.

§ 1814-a. Person not appointed as a tobacco products distributor. (a)

Any person who, while not appointed as a distributor of tobacco products pursuant to the provisions of article twenty of this chapter, imports or causes to be imported into the state more than fifty cigars, more than one pound of tobacco, or more than fifteen units of alternative nicotine products, for sale within the state, or produces, manufactures or compounds tobacco products within the state shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days. If, within any ninety day period, one thousand or more cigars, or five hundred pounds or more of tobacco, or seven thousand five hundred units or more of alternative nicotine products, are imported or caused to be imported into the state for sale within the state or are produced, manufactured or compounded within the state by any person while not appointed as a distributor of tobacco products, such person shall be guilty of a misdemeanor. Provided further, that any person who has twice been convicted under this section shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of tobacco products involved in such violation.

(b) For purposes of this section, the possession or transportation within this state by any person, other than a tobacco products distributor appointed by the commissioner of taxation and finance, at any one time of seven hundred fifty or more cigars, fifteen pounds or more of tobacco, or two hundred twenty-five units or more of alternative nicotine products, shall be presumptive evidence that such tobacco products are possessed or transported for the purpose of sale and are subject to the tax imposed by section four hundred seventy-one-b of this chapter. With respect to such possession or transportation, any provisions of article twenty of this chapter providing for a time period during which the tax imposed by such article may be paid shall not apply.

§ 1815. Highway use and fuel use taxes. - (a) Violations. (1) It shall be unlawful for any person to:

(A) (i) Use or cause or permit to be used, any public highway in this state for the operation of a motor vehicle subject to the provisions of article twenty-one of this chapter without first applying for and obtaining the certificate of registration required under such article or a decal that has been suspended or revoked or that was issued for a motor vehicle other than the one on which affixed. The operation of any motor vehicle on any public highway of this state without a decal required under such article shall be presumptive evidence that a certificate of registration or decal has not been obtained for such motor vehicle;

(ii) Use or cause or permit to be used, any public highway in this state for the operation of a qualified motor vehicle subject to the provisions of article twenty-one-A of this chapter without first obtaining the license and decal required pursuant to such article or to carry or cause or permit to be carried upon any qualified motor vehicle a license or decal which has been suspended or revoked or which was issued for a qualified motor vehicle other than the one on which carried. The operation of any qualified motor vehicle on any public highway of this state without carrying thereon the license or decal required under such article shall be presumptive evidence that a license or decal has not been obtained for such qualified motor vehicle;

(B) Operate, or cause or permit to be operated, on any public highway any motor vehicle subject to the provisions of article twenty-one of this chapter having an actual gross or unloaded weight in excess of the gross or unloaded weight set forth on the certificate of registration issued for such motor vehicle;

(C) Fail to deliver or surrender, pursuant to the provisions of article twenty-one or twenty-one-A of this chapter or any rule or regulation promulgated by the commissioner, a certificate of registration or license or decal to such commissioner, or any person directed by such commissioner to take possession thereof;

(D) Fail to keep records of operations of motor vehicles or qualified motor vehicles as the commissioner shall prescribe;

(E) Violate any other provision of article twenty-one or twenty-one-A of this chapter or any rule or regulation promulgated thereunder.

(2) Any person who violates any provision of this subdivision, upon a first conviction shall be subject to a fine of not less than one hundred

dollars or more than two hundred fifty dollars; and upon a second or subsequent conviction to a fine of not less than two hundred fifty dollars or more than five hundred dollars or by imprisonment for not more than ten days. Except as otherwise provided by law such a violation shall not be a crime and the penalty or punishment imposed therefor shall not be deemed for any purpose a penal or criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person convicted thereof.

(3) For the purposes of conferring jurisdiction upon courts and police officers, and on the officers specified in subdivision four of section 2.10 of the criminal procedure law and on judicial officers generally, such violations shall be deemed traffic infractions and for such purpose only all provisions of law relating to traffic infractions shall apply to such violations; provided, however, that the commissioner of motor vehicles, any hearing officer appointed by him, or any administrative tribunal authorized to hear and determine any charges or offenses which are traffic infractions shall not have jurisdiction of such infractions.

(4) Upon the conviction of any person for a violation of any of the provisions of this subdivision, the trial court or the clerk thereof shall within forty-eight hours certify the facts of the case to the commissioner and such certificate shall be presumptive evidence of the facts recited therein. If any such conviction shall be reversed upon appeal therefrom, the person whose conviction has been so reversed may serve upon the commissioner a certified copy of the order of reversal and the commissioner shall thereupon record the same.

(b) An official weigh slip or ticket issued and certified by any truck weigher in the employ of the department of transportation or by any duly licensed weight master shall constitute prima facie evidence of the information therein set forth and of the operation of the vehicle therein described upon a public highway and shall be admissible before any court in any violation proceeding or criminal proceeding.

§ 1817. Sales and compensating use taxes.-- (a) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who, without possessing a valid certificate

of authority, willfully (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel or short term rental unit, (2) purchases or sells tangible personal property for resale, or (3) sells petroleum products; and any person who fails to surrender a certificate of authority as required by such article shall be guilty of a misdemeanor.

(b) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who within five years after a determination by the commissioner, pursuant to such section, to suspend, revoke or refuse to issue a certificate of authority has become final, and without possession of a valid certificate of authority (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel or short term rental unit, (2) purchases or sells tangible personal property for resale, or (3) sells petroleum products, shall be guilty of a misdemeanor. It shall be an affirmative defense that such person performed the acts described in this subdivision without knowledge of such determination. Any person who violates a provision of this subdivision, upon conviction, shall be subject to a fine in any amount authorized by this article, but not less than five hundred dollars, in addition to any other penalty provided by law.

(c) Any person who willfully fails to file a notice of a show as required by article twenty-eight of this chapter or who willfully rents, leases or grants a license to use space for a show or operates a show without obtaining a permit pursuant to paragraph two of subdivision (b) of section eleven hundred thirty-four of this chapter shall be guilty of a misdemeanor.

(d) Any person (1) who willfully fails to charge separately the tax imposed under article twenty-eight of this chapter or to state such tax separately on any bill, statement, memorandum, receipt or other statement issued or employed by him or her upon which the tax is required to be stated separately as provided in subdivision (a) of section eleven hundred thirty-two of this chapter; or (2) who shall refer or cause reference to be made to such tax in a form or manner other than that required by such article twenty-eight, shall be guilty of a misdemeanor. Provided however, that a person who has paid the tax on behalf of a retail purchaser as provided in subdivision (d) of

section eleven hundred thirty-three of this chapter shall not be guilty of a misdemeanor for failure to separately charge the tax imposed by such article twenty-eight.

(e) Any person willfully failing to file a bond or other security or deposit taxes in any banking institution where such filing or deposit is required pursuant to the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this chapter shall be guilty of a misdemeanor.

(f) Any owner of a filling station who shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which (1) the prepaid tax imposed by section eleven hundred two of this chapter has not been assumed or paid by a distributor registered as such under article twelve-A of this chapter or (2) the prepaid tax imposed by section eleven hundred two of this chapter was required to have been passed through to him and has not been included in the cost of such fuel to him, shall in either case, be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which such tax has not been assumed or paid by a distributor registered as such where such owner has knowledge of the requirement that such tax be paid and where, to his knowledge, such tax has not been assumed or paid by such registered distributor on such motor fuel or diesel motor fuel. Such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel or diesel motor fuel on which such tax is required to have been passed through to him and has not been included in the cost to him where such owner has knowledge of the requirement that such tax be passed through and where to his knowledge such tax has not been so included.

(g) Any person who willfully fails to keep any records required by article twenty-eight of this chapter shall be guilty of a misdemeanor.

(h) The penalties provided for in this section shall not preclude prosecution pursuant to the penal law with respect to the willful failure of any person to pay over to the state any sales tax imposed by section eleven hundred four, eleven hundred five, eleven hundred seven, eleven hundred eight or eleven hundred nine of this chapter or by any local law adopted by any city or county pursuant to article twenty-nine

of this chapter, whenever such person has been required to collect and has collected any such sales tax. In any such prosecution under the penal law, a person who has been required to collect and has collected any such tax shall be deemed to have acted in a fiduciary character with respect to the state or a political subdivision thereof, and the tax collected shall be deemed to have been entrusted to such person by the state or a political subdivision thereof.

(i) Any entertainment promoter who willfully authorizes an entertainment vendor, to whom such promoter has either directly or indirectly rented, leased, granted a license to use or under any other arrangement made space available in order for such vendor to make taxable sales of tangible personal property at an entertainment event, without first requiring such vendor to obtain a certificate of authority or who willfully fails to obtain an entertainment promoter certificate as required under article twenty-eight of this chapter shall be guilty of a misdemeanor.

(j) Any person described in subdivision (a) of section eleven hundred forty-two-A of this chapter who willfully fails to include all information required under such section on a ticket or other memorandum as described in such section shall be guilty of a misdemeanor.

(k) Any owner of a place of business selling cigarettes at retail who shall willfully and knowingly have in such owner's custody or possession or under such owner's control any cigarettes on which (1) the prepaid tax imposed by section eleven hundred three of this chapter has not been assumed or paid by an agent licensed as such under article twenty of this chapter or (2) the prepaid tax imposed by section eleven hundred three of this chapter was required to have been passed through to such owner and has not been included in the cost of such cigarettes to such owner shall, in either case, be guilty of a misdemeanor. Provided, however, if the amount of cigarettes is twenty thousand or more, such owner shall be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in such owner's custody or possession or under such owner's control any cigarettes on which such tax has not been assumed or paid by an agent licensed as such under such article twenty where such owner has knowledge of the requirement that such tax be assumed or paid and where, to such owner's knowledge, such tax has not been assumed or paid by such

an agent on such cigarettes. Such owner shall willfully and knowingly have in such owner's custody or possession or under such owner's control cigarettes on which such tax is required to have been passed through to such owner and has not been included in the cost to such owner where such owner has knowledge of the requirement that such tax be passed through and where to such owner's knowledge such tax has not been so included.

(l) Any person who falsely or fraudulently makes, alters or counterfeits any stamp prescribed by the commissioner under the provisions of article twenty-eight or pursuant to the authority of article twenty-nine of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possesses any cigarettes in packages bearing any such false, altered or counterfeited stamp, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp prescribed by the commissioner under the provisions of article twenty-eight or pursuant to the authority of article twenty-nine of this chapter, or who knowingly and willfully possesses any such device, shall be guilty of a class E felony. For the purposes of this subdivision, the words "stamp prescribed by the commissioner" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by the commissioner.

(m) All of the provisions of this section shall apply for purposes of any taxes administered by the commissioner and imposed pursuant to the authority of article twenty-nine of this chapter and for the purposes of any taxes imposed by article twenty-eight-A of this chapter. References in subdivisions (f), (k), and (l) of this section to taxes imposed by or pursuant to the authority of article twenty-eight or twenty-nine of this chapter include the taxes required to be prepaid pursuant to section eleven hundred two or eleven hundred three of this chapter.

(n) (1) Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of this chapter, shall comply with the provisions of section three hundred ninety-two-i of the general business law by reducing the

prices charged for motor fuel and diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor or imposed on retail customers resulting from computing sales and compensating use taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section one thousand one hundred eleven of this chapter.

(2) The commissioner shall monitor the prices charged by persons engaged in the retail sale or distribution of motor fuel and diesel motor fuel.

(3) Upon a finding by the commissioner that a person engaged in the retail sale of motor fuel and/or diesel motor fuel or in the distribution of such fuels has violated the provisions of section three hundred ninety-two-i of the general business law, the commissioner shall provide notice of such violation to such person and hold a hearing on such violation, with an opportunity for the accused to be heard, not less than ten days after notice is provided. A violation of section three hundred ninety-two-i of the general business law shall subject the person violating such section to a civil penalty of up to five thousand dollars for each day such violation occurs.

§ 1818. Real estate transfer tax.--Any willful act or omission, by any person which constitutes a violation of any provision of article thirty-one of this chapter shall constitute a misdemeanor.

§ 1820. Authorized combative sports tax. Any willful act or omission by any person which constitutes a violation of any provision of article nineteen of this chapter shall constitute a misdemeanor.

§ 1821. Medallion taxicab owners tax in the metropolitan commuter transportation district. Any willful act or omission by any person which constitutes a violation of any provision of article twenty-nine-A of this chapter shall constitute a misdemeanor.

§ 1822. Violation of the state assessment fee on transportation network company prearranged trips. Any willful act or omission by any person that constitutes a violation of any provision of article twenty-nine-B of this chapter shall constitute a misdemeanor.

PART IV - MISCELLANEOUS CRIMES

Section 1825. Violation of secrecy provisions of the tax law.

1826. Use of tax or other notices to distribute advertising and propaganda material.

1827. Commissioner not to be interested in tax sale.

1829. Violation of article twenty-A.

1830. Other references.

1831. Failure to obey subpoenas.

1832. Non-preemption; penal law anticipatory offenses and accessorial liability apply.

1833. Tax preparer registration.

§ 1825. Violation of secrecy provisions of the tax law.--Any person who violates the secrecy provisions of this chapter or subdivision (e) of section 11-1797 of the administrative code of the city of New York shall be guilty of a misdemeanor.

§ 1826. Use of tax or other notices to distribute advertising and propaganda material.--(a) Any person, firm, corporation, or association, or agent or employee thereof, who mails or delivers or causes to be mailed or delivered, any notice, circular, pamphlet, card, hand-bill, printed or written notice of any kind other than that which is authorized or required by law with a statement of moneys due the state of New York or any political subdivision thereof, or with a tax bill or notification of a tax to be assessed or levied by the state of New York or any political subdivision thereof, is guilty of a misdemeanor.

(b) Notwithstanding the foregoing provisions of this section, it shall be lawful for the governing body of any political subdivision, by resolution unanimously passed to designate a particular written or

printed notice relating to water rates, sewer rentals, permit fees and other fees and charges payable to the political subdivision to be included with said tax bill or notification of a tax to be assessed or levied.

§ 1827. Commissioner not to be interested in tax sale.--The commissioner, or any person employed in such commissioner's office, who shall be directly or indirectly interested in any tax sale made by such commissioner, or in the title acquired by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes by the commissioner or on the cancellation of any such tax sale; or any person who shall pay or give to the commissioner, or to any employee of such commissioner's office, any compensation, reward or promise thereof for any service or services performed in regard to such sale, redemption, cancellation or such tax title, is guilty of a misdemeanor. A sale in violation of this section is void.

§ 1829. Violation of article twenty-A. Any wholesale dealer or retail dealer who violates any of the provisions of article twenty-A of this chapter may be prosecuted and upon conviction shall be guilty of a class B misdemeanor.

§ 1830. Other references.--For criminal penalties for violations of article thirty-four of this chapter relating to the New York state lottery for education, see sections sixteen hundred nine and sixteen hundred ten of this chapter.

§ 1831. Failure to obey subpoenas. Any person who is duly subpoenaed, pursuant to section one hundred seventy-four of this chapter or the provisions of the civil practice law and rules, in connection with any matter arising under this chapter, or any related income or earnings tax statute, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers, and who (1) fails or refuses to

attend without lawful excuse, (2) refuses to be sworn, (3) without asserting a valid legal privilege refuses to answer any material and proper question, or (4) without asserting a valid legal privilege refuses, after reasonable notice, to produce books, accounts, records, memoranda, documents or other papers that constitute material and proper evidence in his or her possession or under his or her control, shall be guilty of a misdemeanor.

§ 1832. Non-preemption; penal law anticipatory offenses and accessorial liability apply. (a) Unless expressly stated otherwise, the penalties provided in this chapter shall not preclude prosecution for any offense under the penal law or any other criminal statute.

(b) The offenses specified in title G of the penal law and the provisions of article twenty of the penal law are applicable to all offenses defined in this chapter.

§ 1833. Tax preparer registration. A commercial tax return preparer, as defined by paragraph three of subdivision (a) of section thirty-two of this chapter, who willfully and with the intent to evade the requirements of section thirty-two of this chapter, fails to sign his or her name to any tax return that requires a signature or fails to register as required by such section thirty-two, will be guilty of a class A misdemeanor.

PART V - PROCEDURAL PROVISIONS

Section 1838. Filing of documents.

1839. Disposition of fines.

§ 1838. Filing of documents.--For purposes of the prosecution of offenses under the provisions of this chapter, reports, returns, statements, lists, accounts, other documents or other information required to be filed with or delivered to the tax commission shall include such items which under the provisions of this chapter or any

related statute are required to be recorded or filed with, served upon or delivered to another person including, but not limited to, a court, appraiser, recording officer of any county within the state, county clerk, surrogate's assistant, surrogate's clerk, county treasurer, any other governmental agency or entity, securities exchange, clearing corporation or other entity in its capacity as an agent of the tax commission.

§ 1839. Disposition of fines.--All fines levied under this article shall be paid into the state treasury to the credit of the general fund.

PART VI - SEIZURES AND FORFEITURES

- Section 1845. Forfeiture action with respect to alcoholic beverages and vehicles carrying such beverages.
1846. Seizure and forfeiture of cigarettes.
- 1846-a. Forfeiture action with respect to tobacco products.
1847. Seizure and forfeiture of vehicles or other means of transportation used to transport or for deposit or concealment of cigarettes or used to import tobacco products.
1848. Forfeiture action with respect to motor fuel and diesel motor fuel and vehicle carrying such fuel.

§ 1845. Forfeiture action with respect to alcoholic beverages and vehicles carrying such beverages. (a) Temporary seizure. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his special duties, shall discover more than ninety liters of liquors which are being imported for sale or use in the state, where the person importing or causing such liquors to be imported is not registered as a distributor under section four hundred twenty-one of this chapter, such police officer or peace officer is hereby authorized to seize and take possession of such liquors, and to seize and take possession of the vehicle or other means of

transportation used to transport such liquors.

(b) Retention of property. The department shall hold and safely keep such liquors, vehicle or other means of transportation seized pursuant to subdivision (a) of this section. Seized liquors may be deposited to the credit of the department at a storage facility within the state or may be sold by the department.

(c) Confirmation of temporary seizure. Within five business days after the temporary seizure of liquors, vehicle or other means of transportation pursuant to subdivision (a) of this section, the department shall move in supreme court in the county where the temporary seizure occurred, on such notice as the court shall direct to the owners of the property, to confirm the temporary seizure. If the department fails to make such motion within the required period, such seized property shall be restored to the owners thereof as provided in subdivision (e) of this section. On a motion for an order confirming the seizure, the department shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action for forfeiture under subdivision (d) of this section and that there are grounds for confirmation of the seizure. The department shall include, in its motion papers, an inventory of all seized property. The court shall grant an application for an order confirming the seizure when it determines that there is a substantial probability that the department will prevail on the issue of forfeiture.

(d) Forfeiture action. (1) A forfeiture action shall be commenced within forty-five days from the date of the seizure. Such action shall be commenced and service shall be made in accordance with the methods authorized by the civil practice law and rules or the business corporation law. Upon such terms as may be just and upon good cause shown, the court may extend the time, not exceeding thirty days, within which the summons must be served, provided that the application for extensions made before the expiration of the time fixed. If the department fails to commence the forfeiture action within the required period, such seized property shall be restored to the owners thereof as provided in subdivision (e) of this section.

(2) A forfeiture action under this subdivision shall be commenced in supreme court. The proper venue for trial of an action for forfeiture is the county in which the temporary seizure authorized by subdivision (a)

of this section occurred.

(3) Forfeiture of liquors together with the vehicle or other means of transportation used to transport such liquors shall be adjudged where the department proves, by clear and convincing evidence, that the person importing or causing such liquors to be imported was not registered as a distributor under section four hundred twenty-one of this chapter. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

(4) The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon an application as provided for herein.

(A) At any time during the pendency of a forfeiture action, the department or a defendant may apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice.

(B) Such application for relief provided in subparagraph (a) hereof must be made in writing and upon notice to all parties. The court, in its discretion, may direct that notice be given to any other person having an interest in the property.

(C) An application for the relief provided for in subparagraph (A) hereof must be brought exclusively in the supreme court in the county in which the forfeiture action is pending.

(D) The court may grant the relief provided in subparagraph (A) hereof if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Reporting and payment of the tax imposed by or pursuant to article eighteen of this chapter with respect to such liquors subsequent to the seizure of such liquors shall not constitute a compelling factor, consideration or circumstance warranting the granting of the relief provided for in subparagraph (A) of this paragraph. In determining whether such relief is warranted by the existence of some compelling factor, consideration or circumstances pursuant to this paragraph, the court may, however, take into account the fact that such taxes with respect to the seized liquors have been reported and remitted to the state prior to the temporary seizure of such liquors if such unregistered importation into the state was effected in good faith and

without knowledge of the requirement of registration and without intent to evade tax. The court must issue a written decision, stating the basis for an order issued pursuant to this paragraph.

(5) An action under this subdivision shall be stayed during the pendency of a criminal action which is related to it; provided, that upon motion of a defendant in the forfeiture action or the department, a court may, in the interest of justice and for good cause, and with the consent of all parties, order that the forfeiture action proceed despite the pending criminal action; and provided that such stay shall not prevent the granting or continuance of an order confirming the seizure provided under this section.

(6) The total that may be recovered shall not exceed the value of the liquors seized and, in addition, either the value of the vehicle or other means of transportation used to transport such liquors or three times the amount of the tax, interest and penalty under article eighteen of this chapter with respect to the liquors, whichever is less.

(e) Return of property. If (1) the department fails to move for confirmation of the seizure pursuant to subdivision (c) of this section or (2) a court denies an application for an order confirming the seizure or (3) judgment is entered against the department in the forfeiture action and that judgment is affirmed after all appeals are exhausted or the time within which to appeal has expired, then the department shall restore such seized liquors, or liquors of a like quantity and type, or such seized vehicle or other means of transportation to the owners thereof. Alternatively, if such seized liquors have been sold as provided in subdivision (b) of this section, the department shall pay to the owners of such liquors the proceeds of such sale or, if greater, an amount of money representing the fair market value of the liquors at the time of the seizure.

(f) Release of property. A person whose property has been seized may move, upon notice to the commissioner, in the supreme court in the county in which the temporary seizure occurred, for an order releasing all or part of the property seized upon payment of the department's reasonable fees and expenses, if any. On such a motion, the defendant shall give an undertaking in accordance with article twenty-five of the civil practice law and rules, in an amount equal to the value of the property sought to be released, that defendant will pay the department

the value of such property which may be adjudged forfeited (but in the case of the owner of a vehicle or other means of transportation, the amount of the undertaking required shall not exceed three times the amount of all taxes, interest and penalties due under article eighteen of this chapter).

(g) Disposal of property. The department, after a judicial determination of forfeiture, shall, in its discretion, either retain such seized property for its official use or sell such forfeited property at public sale. The net proceeds of any such sale, or of any sale of seized liquors as provided in subdivision (b) of this section, after deduction of the lawful expenses incurred, shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter with respect to deposit and disposition of revenue.

(h) Wrongful seizure. A defendant in a forfeiture action may recover in an action for wrongful seizure all costs and damages, including reasonable attorneys' fees, which may be sustained by reason of the seizure if the defendant recovers judgment in the forfeiture action, or if it is finally decided that there was no justification for the seizure. In order to establish a claim for wrongful seizure, the defendant must establish by a preponderance of the evidence that the seizure was made without reasonable cause and not in good faith. An action for wrongful seizure under this subdivision shall be the defendant's exclusive remedy in connection with seizures made under this section. No suit or action for wrongful seizure under this section shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

(i) The remedies provided to the department by this section shall be in addition to any other remedies provided by law.

(j) An action under this section is civil and remedial and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise provided by statute, the proceedings under this section shall be governed by the civil practice law and rules. An action under this section is not a criminal proceeding and shall not be deemed to be a previous prosecution under article forty of the criminal procedure law.

(k) An additional ground for seizure and forfeiture under this section

shall be where such police officer or peace officer shall discover more than ninety liters of liquors in this state, with respect to which the taxes imposed by or pursuant to article eighteen of this chapter have not been paid or assumed by a person registered as a distributor pursuant to such article, which are in the course of distribution in this state or which are being sold in this state. All the foregoing subdivisions of this section shall apply to the seizure and forfeiture of liquors referred to in this subdivision and the vehicle transporting the same as if such foregoing subdivisions specifically referred to such grounds and as if such grounds set forth in this subdivision were set forth as grounds for seizure in subdivision (a) hereof. Provided that in the forfeiture action with respect to the liquors or vehicle referred to in this subdivision, the department shall be required to show that such liquors were found within the state and that they were in the course of distribution in this state or were being sold in this state.

(l) This section shall also apply to a forfeiture action with respect to the importation of more than ninety liters of liquors into a city imposing a tax pursuant to the authority of section four hundred forty-five of this chapter by a person not registered as a distributor for purposes of such tax or, in addition, with respect to the distribution or sale of untaxed liquors in such city.

§ 1846. Seizure and forfeiture of cigarettes.--(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes subject to tax provided by article twenty of this chapter or by chapter thirteen of title eleven of the administrative code of the city of New York, and upon which the tax has not been paid or the stamps not affixed as required by such article or such chapter thirteen, they are hereby authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machine or receptacle in which they are held for sale. Such cigarettes, vending machine or receptacle seized by a police officer or such peace officer shall be turned over to the commissioner. Such seized cigarettes, vending machine or receptacle, not including money contained in such

vending machine or receptacle, shall be forfeited to the state. The commissioner may, within a reasonable time thereafter, upon publication of a notice to such effect for at least five successive days, before the day of sale, in a newspaper published or circulated in the county where the seizure was made, sell such forfeited vending machines or receptacles at public sale and pay the proceeds into the state treasury to the credit of the general fund. Notwithstanding any other provision of this section, the commissioner may enter into an agreement with any city of this state which is authorized to impose a tax similar to that imposed by article twenty of this chapter to provide for the disposition between the state and any such city of the proceeds from any such sale. All cigarettes forfeited to the state shall be destroyed or used for law enforcement purposes, except that cigarettes that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the cigarettes may not be used for law enforcement purposes, the commissioner must, within a reasonable time after the forfeiture of such cigarettes, upon publication in the state registry, destroy such forfeited cigarettes. The commissioner may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarettes to inspect such forfeited cigarettes in order to assist in any investigation regarding such cigarettes.

(a-1) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes which have been stamped in violation of section four hundred eighty-b of this chapter, such officer is hereby authorized and empowered forthwith to seize and take possession of such cigarettes, and such cigarettes shall be subject to a forfeiture action pursuant to the procedures provided for in article thirteen-A of the civil practice law and rules, as if such article specifically provided for forfeiture of cigarettes seized pursuant to this section as a preconviction forfeiture crime. Subdivisions (b), (c) and (d) of this section shall not apply to cigarettes seized pursuant to this subdivision.

(b) In the alternative, the tax commission, on reasonable notice by mail or otherwise, may permit the person from whom said cigarettes were

seized to redeem the said cigarettes, and any vending machine or receptacle seized therewith, by the payment of the tax due, plus a penalty of fifty per centum thereof, plus interest on the amount of tax due for each month or fraction thereof after such tax became due (determined without regard to any extension of time for filing or paying) at the rate applicable under subparagraph (ii) of paragraph (a) of subdivision one of section four hundred eighty-one of this chapter and the costs incurred in such proceeding, which total payment shall not be less than five dollars; provided, however, that such seizure and sale or redemption shall not be deemed to relieve any person from fine or imprisonment provided for in this article for violation of any provision of article twenty of this chapter.

(c) In the alternative, the tax commission may dispose of any cigarettes seized pursuant to this section, except those that violate, or are suspected of violating, federal trademark laws or import laws, by transferring them to the department of corrections and community supervision for sale to or use by incarcerated individuals in such institutions.

(d) Cigarettes seized pursuant to a violation of section four hundred seventy-three-b of this chapter shall be destroyed. The department may also seize and destroy any vending machine or receptacle in which cigarettes stamped in violation of section four hundred seventy-three-b of this chapter are held for sale.

§ 1846-a. Forfeiture action with respect to tobacco products. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to their special duties, shall discover any tobacco products in excess of five hundred cigars, ten pounds of tobacco, or one hundred fifty units of alternative nicotine products, which are possessed for the purpose of sale in the state when the excise taxes on such tobacco products have not been assumed or paid by a distributor appointed pursuant to section four hundred seventy-two of this chapter, such police officer or peace officer is hereby authorized and empowered forthwith to seize and take possession of such tobacco products. Such tobacco products seized by a police officer or

peace officer shall be turned over to the commissioner. Such seized tobacco products shall be forfeited to the state. All tobacco products forfeited to the state shall be destroyed or used for law enforcement purposes, except that tobacco products that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the tobacco products may not be used for law enforcement purposes, the commissioner must, within a reasonable time thereafter, upon publication in the state registry of a notice to such effect before the day of destruction, destroy such forfeited tobacco products. The commissioner may, prior to any destruction of tobacco products, permit the true holder of the trademark rights in the tobacco products to inspect such forfeited products in order to assist in any investigation regarding such tobacco products.

(a-1) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of the criminal procedure law, acting pursuant to his or her special duties, discovers any roll-your-own tobacco that is in violation of section four hundred eighty-c of this chapter, the officer is authorized and empowered to seize and take possession of the roll-your-own tobacco, and the roll-your-own tobacco is subject to a forfeiture action under the procedures provided for in article thirteen-A of the civil practice law and rules, as if that article specifically provided for forfeiture of roll-your-own tobacco seized under this section as a preconviction forfeiture crime. Subdivisions (b) and (c) of this section do not apply to roll-your-own tobacco seized pursuant to this subdivision.

(b) In the alternative, the commissioner, on reasonable notice by mail or otherwise, may permit the person from whom said tobacco products were seized to redeem the said tobacco products by the payment of the tax due, plus a penalty of fifty per centum thereof, plus interest on the amount of tax due for each month or fraction thereof after such tax became due (determined without regard to any extension of time for filing or paying) at the rate applicable under subparagraph (ii) of paragraph (a) of subdivision one of section four hundred eighty-one of this chapter and the costs incurred in such proceeding, which total payment shall not be less than five dollars; provided, however, that

such seizure and sale or redemption shall not be deemed to relieve any person from fine or imprisonment provided for in this article for violation of any provision of article twenty of this chapter.

(c) In the alternative, the commissioner may dispose of any tobacco products seized pursuant to this section, except those that violate, or are suspected of violating, federal trademark or import laws, by transferring them to the department of corrections and community supervision for sale to or use by incarcerated individuals in such institutions.

§ 1847. Seizure and forfeiture of vehicles or other means of transportation used to transport or for deposit or concealment of cigarettes or used to import tobacco products. (a) Any peace officer designated in subdivision four or five of section 2.10 of the criminal procedure law, acting pursuant to his or her special duties, or any police officer designated in section 1.20 of the criminal procedure law may seize any vehicle or other means of transportation used to transport or for the deposit or concealment of more than one hundred unstamped or unlawfully stamped packages of cigarettes subject to tax under article twenty of this chapter or by chapter thirteen of title eleven of the administrative code of the city of New York, other than a vehicle or other means of transportation used by any person as a common carrier in transaction of business as such common carrier, and such vehicle or other means of transportation shall be subject to forfeiture as hereinafter in this section provided.

(b) Any peace officer designated in subdivision four of section 2.10 of the criminal procedure law, acting pursuant to their special duties, or any police officer designated in section 1.20 of the criminal procedure law may seize any vehicle or other means of transportation used to import tobacco products in excess of five hundred cigars, ten pounds of tobacco, or one hundred fifty units of alternative nicotine products, for sale where the person importing or causing such tobacco products to be imported has not been appointed a distributor pursuant to section four hundred seventy-two of this chapter, other than a vehicle or other means of transportation used by any person as a common carrier in transaction of business as such common carrier, and such vehicle or

other means of transportation shall be subject to forfeiture as hereinafter in this section provided.

(c) The seized property shall be delivered by the officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the city of New York, Yonkers or Buffalo, the seized property shall be delivered to the custody of the police department of such city, together with a report of all the facts and circumstances of the seizure.

(d) It shall be the duty of the district attorney of the county wherein the seizure was made, if elsewhere than in the city of New York, Yonkers or Buffalo, and where the seizure is made in any of such cities it shall be the duty of the corporation counsel of the city, to inquire into the facts of the seizure so reported to him and if it appears probable that a forfeiture has been incurred, for the determination of which the institution of proceedings in the supreme court is necessary, to cause the proper proceedings to be commenced and prosecuted, at any time after thirty days from the date of seizure, to declare such forfeiture, unless, upon inquiry and examination such district attorney or corporation counsel decides that such proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case, the district attorney or corporation counsel shall cause such seized property to be returned to the owner thereof.

(e) Notice of the institution of the forfeiture proceeding shall be served either (i) personally on the owners of the seized property or (ii) by registered mail to the owners' last known address and by publication of the notice once a week for two successive weeks in a newspaper published or circulated in the county wherein the seizure was made.

(f) Forfeiture shall not be adjudged where the owners establish by a preponderance of the evidence that (i) the use of such seized property was not intentional on the part of any owner, (ii) said seized property was used by any person other than an owner thereof, while such seized property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any state, or (iii) forfeiture is not warranted or would not serve the ends of justice, taking into consideration the factors

specified in paragraph (d) of subdivision four of section thirteen hundred eleven of the civil practice law and rules.

(g) The district attorney or the police department having custody of the seized property, after such judicial determination of forfeiture, shall, at its discretion, either retain such seized property for the official use of its office or department, transfer such property to the department of taxation and finance of the state of New York for its official use, or, upon publication of a notice to such effect for at least five successive days, before the day of sale, in a newspaper published or circulated in the county where the seizure was made, sell such forfeited property at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made except that the net proceeds of the sale of property seized in the city of New York, Yonkers or Buffalo shall be paid into the general fund of such city.

(h) Whenever any property is seized and declared forfeited, any person interested in any such property may apply to a justice of the supreme court, on serving a notice of petition and petition on the appropriate district attorney, police department or corporation counsel, for the recovery of such forfeited property. The justice of the supreme court to whom such application is made may restore said forfeited property upon such terms as he deems reasonable and just, if the petitioner establishes either of the affirmative defenses set forth in subdivision (f) of this section and that the petitioner was without personal or actual knowledge of the forfeiture proceeding. If the petition is filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the district attorney, police department or corporation counsel.

(i) No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

§ 1848. Forfeiture action with respect to motor fuel and diesel motor fuel and vehicle carrying such fuel.

(a) Temporary seizure. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his special duties, shall discover any motor fuel or diesel motor fuel which is being imported for use, distribution, storage or sale in the state where the person importing or causing such motor fuel or diesel motor fuel to be imported is not registered as a distributor under section two hundred eighty-three or section two hundred eighty-two-a, of this chapter, as the case may be, such police officer or peace officer is hereby authorized to seize and take possession of such motor fuel or diesel motor fuel, together with the vehicle or other means of transportation used to transport such motor fuel.

(b) Retention of property. The department shall hold and safely keep such motor fuel, diesel motor fuel, vehicle or other means of transportation seized pursuant to subdivision (a) of this section. Seized motor fuel or diesel motor fuel may be deposited to the credit of the department at a terminal or other storage facility within the state or may be sold by the department on the open market.

(c) Confirmation of temporary seizure. Within five business days after the temporary seizure of motor fuel, diesel motor fuel, vehicle or other means of transportation pursuant to subdivision (a) of this section, the department shall move in supreme court in any county, on such notice as the court shall direct to the owners of the property, to confirm the temporary seizure. If the department fails to make such motion within the required period, such seized property shall be restored to the owners thereof as provided in subdivision (e) of this section. On a motion for an order confirming the seizure, the department shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action for forfeiture under subdivision (d) of this section and that there are grounds for confirmation of the seizure. The department shall include, in its motion papers, an inventory of all seized property. The court shall grant an application for an order confirming the seizure when it determines that there is a substantial probability that the department will prevail on the issue of forfeiture.

(d) Forfeiture action. (1) A forfeiture action shall be commenced within forty-five days from the date of the seizure. Such action shall be commenced by service of a summons with notice or summons and

complaint in accordance with the methods authorized by the civil practice law and rules or the business corporation law with respect to personal service of a summons. Upon such terms as may be just and upon good cause shown the court may extend the time, not exceeding thirty days, within which the summons must be served, provided that the application for extensions made before the expiration of the time fixed. If the department fails to commence the forfeiture action within the required period, such seized property shall be restored to the owners thereof as provided in subdivision (e) of this section.

(2) A forfeiture action under this subdivision shall be commenced in supreme court. The proper venue for trial of an action for forfeiture is the county in which the temporary seizure authorized by subdivision (a) of this section occurred.

(3) Forfeiture of motor fuel or diesel motor fuel together with the vehicle or other means of transportation used to transport such motor fuel or diesel motor fuel shall be adjudged where the department proves, by clear and convincing evidence, that the person importing or causing such motor fuel or diesel motor fuel to be imported was not registered as a distributor under section two hundred eighty-three or section two hundred eighty-two-a of this chapter, as the case may be. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

(4) The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon an application as provided for herein.

(A) At any time during the pendency of a forfeiture action, the department of taxation and finance or a defendant may apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice.

(B) Such application for the relief provided in subparagraph (A) hereof must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(C) An application for the relief provided for in subparagraph (A) hereof must be brought exclusively in the supreme court in the county in which the forfeiture action is pending.

(D) The court may grant the relief provided in subparagraph (A) of

this paragraph if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Reporting and payment of the tax imposed pursuant to article twelve-A or article twenty-eight of this chapter with respect to such motor fuel or diesel motor fuel subsequent to the seizure of such fuel shall not constitute a compelling factor, consideration or circumstance warranting the granting of the relief provided for in subparagraph (A) of this paragraph. In determining whether such relief is warranted by the existence of some compelling factor, consideration or circumstances pursuant to this paragraph, the court may, however, take into account the fact that such taxes with respect to the seized fuel have been reported and remitted to the state prior to the temporary seizure of such fuel if the unregistered importation into the state was effected in good faith and without knowledge of the requirement of registration and without intent to evade tax. The court must issue a written decision, stating the basis for an order issued pursuant to this paragraph.

(5) An action under this subdivision shall be stayed during the pendency of a criminal action which is related to it; provided, that upon motion of a defendant in the forfeiture action or the department of taxation and finance, a court may, in the interest of justice and for good cause, and with the consent of all parties, order that the forfeiture action proceed despite the pending criminal action; and provided that such stay shall not prevent the granting or continuance of an order confirming the seizure provided under this section.

(6) The total that may be recovered shall not exceed the value of the motor fuel or diesel motor fuel seized and, in addition, either the value of the vehicle or other means of transportation used to transport such fuel or three times the amount of the tax and penalty under articles twelve-A, thirteen-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter with respect to the motor fuel or diesel motor fuel, whichever is less.

(e) Return of property. If (1) the department fails to move for confirmation of the seizure pursuant to subdivision (c) of this section or (2) a court denies an application for an order confirming the seizure or (3) judgment is entered against the department in the forfeiture

action and that judgment is affirmed after all appeals are exhausted, then the department shall restore such seized motor fuel or diesel motor fuel, or motor fuel or diesel motor fuel of a like quantity and type, or such seized vehicle or other means of transportation to the owners thereof. Alternatively, if such seized motor fuel or diesel motor fuel has been sold as provided in subdivision (b) of this section, the department shall pay to the owners of such motor fuel or diesel motor fuel the proceeds of such sale or, if greater, an amount of money representing the fair market value of the motor fuel or diesel motor fuel at the time of the seizure.

(f) Release of property. A person whose property has been seized may move, upon notice to the department of taxation and finance, in the supreme court in any county, provided that if the department shall have moved to confirm the temporary seizure of such property, in the supreme court of such county for an order releasing all or part of the property seized upon payment of the department's fees and expenses, if any. On such a motion, the defendant shall give an undertaking in accordance with article twenty-five of the civil practice law and rules, in an amount equal to the value of the property sought to be released, that he will pay the department the value of such property which may be adjudged forfeited (but in the case of the owner of a vehicle or other means of transportation, the amount of the undertaking required shall not exceed three times the amount of all taxes and penalties due under articles twelve-A, thirteen-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter).

(g) Disposal of property. The department, after a judicial determination of forfeiture, shall, in its discretion, either retain such seized property for its official use or sell such forfeited property at public sale. The net proceeds of any such sale, or of any sale of seized motor fuel or diesel motor fuel as provided in subdivision (b) of this section, after deduction of the lawful expenses incurred, shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter with respect to deposit and disposition of revenue.

(h) Wrongful seizure. A defendant in a forfeiture action may recover in an action for wrongful seizure all costs and damages, including reasonable attorneys' fees, which may be sustained by reason of the

seizure if the defendant recovers judgment in the forfeiture action, or if it is finally decided that there was no justification for the seizure. In order to establish a claim for wrongful seizure, the defendant must establish by a preponderance of the evidence that the seizure was made without reasonable cause and not in good faith. An action for wrongful seizure under this subdivision shall be the defendant's exclusive remedy in connection with seizures made under this section. No suit or action for wrongful seizure under this section shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

(i) The remedies provided to the department of taxation and finance by this section shall be in addition to any other remedies provided by law.

(j) An action under this section is civil and remedial and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise provided by statute, the proceedings under this section shall be governed by the civil practice law and rules. An action under this section is not a criminal proceeding and shall not be deemed to be a previous prosecution under article forty of the criminal procedure law.

ARTICLE 40

DIVISION OF TAX APPEALS

Section 2000. Statement of purpose.

2002. Division of tax appeals; organization.

2004. Tax appeals tribunal; organization and appointment.

2006. Tax appeals tribunal; functions, powers and duties.

2008. Commencement of proceedings.

2010. Administrative law judges.

2012. Small claims unit.

2014. Representation of petitioners.

2016. Judicial review.

2018. Frivolous petitions.

2020. Official seal.

2022. Manner of execution of instruments by the tax appeals tribunal.

2024. Traveling expenses.

§ 2000. Statement of purpose. This article is enacted to establish an independent division of tax appeals within the department of taxation and finance which shall be responsible for providing the public with a just system of resolving controversies with such department of taxation and finance and to ensure that the elements of due process are present with regard to such resolution of controversies. The division shall be responsible for processing and reviewing petitions, providing hearings as prescribed pursuant to this chapter or as a matter of right where the right to a hearing is not specifically provided for, modified or denied by another provision of this chapter, rendering determinations and decisions and all other matters relating to the administration of the administrative hearing process. The administrative hearing process is the process commenced by the filing of a petition protesting a notice issued by the commissioner of taxation and finance of a determination of tax due, a tax deficiency, a denial of a refund or credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives a person the right to a hearing under this chapter.

§ 2002. Division of tax appeals; organization. There shall be in the department of taxation and finance a separate and independent division of tax appeals to be operated and administered by a tax appeals tribunal. The powers, functions, duties and obligations of the division shall be separate from and independent of the authority of the commissioner of taxation and finance.

§ 2004. Tax appeals tribunal; organization and appointment. The tax appeals tribunal shall consist of three commissioners who shall be appointed by the governor by and with the advice and consent of the senate. The governor shall designate one of the members of the tribunal to be president of the tax appeals tribunal, who shall be the executive

of the division of tax appeals and have sole charge of the administration of such division and who shall serve in the capacity of president during the pleasure of the governor. The two other members of the tribunal shall join with the president in exercising the powers and performing the duties specifically imposed by law on the tribunal as a body. The tribunal may determine the rules of its procedure and may prescribe specific powers and duties of the president not inconsistent with any provision of law. A majority of the tribunal shall constitute a quorum for the purposes of exercising such powers and performing such duties, including the issuing of decisions. No person shall be appointed as a member of the tax appeals tribunal unless at the time of his appointment he is a resident of the state and is knowledgeable on the subject of taxation and is skillful in matters pertaining thereto, and furthermore, at least two members of the tribunal shall each have been admitted to practice as attorneys at law in this state for a total of ten years preceding their appointments. Once appointed and confirmed, each commissioner shall continue in office until his term expires and until his successor has been appointed and has qualified. The term of office of each commissioner shall be nine years. Vacancies in the tribunal occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as original appointments. Any commissioner may after notice and an opportunity to be heard, be removed by the governor for neglect of duty or misfeasance in office, and a commissioner may be removed for other cause by the senate on the recommendation of the governor. Each commissioner shall devote his entire time to the duties of his office. Each commissioner shall receive annual salaries within the amounts appropriated therefor.

§ 2006. Tax appeals tribunal; functions, powers and duties. The tribunal shall have the following functions, powers and duties:

1. To establish, consolidate, alter or abolish any unit in the division; to appoint the heads of such units and fix their duties; and to establish, consolidate or alter any positions in the division.

2. To appoint, remove or transfer officers, assistants, administrative

law judges, and other employees as it may deem necessary for the exercise of the powers and performance of the duties of the division of tax appeals, all of whom shall be in the classified civil service unless otherwise provided by law; to appoint a secretary to the tax appeals tribunal, which position shall be in the exempt class of the classified service; and to prescribe their duties, and fix their compensation within the amounts appropriated therefor.

3. To prepare and submit to the commissioner of taxation and finance itemized estimates of the financial needs of the division of tax appeals, in such form and at such times as may be required, for inclusion as part of the financial needs of the department of taxation and finance furnished to the governor. The itemized estimates prepared by the tax appeals tribunal shall not be revised or altered in any manner by the commissioner of taxation and finance prior to their submission to the governor.

4. To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter. Where such a request is made by a person seeking review of taxes determined or claimed to be due under this chapter, the liability of such person shall become finally and irrevocably fixed, unless such person, within ninety days from the time such liability is assessed, shall petition the division of tax appeals for a hearing to review such liability except that, as provided in subdivision (a) of section five hundred twenty-eight of this chapter, a determination relating to the tax imposed by article twenty-one-A of this chapter shall finally and irrevocably fix such tax unless the person against whom it is assessed shall petition the division of tax appeals for a hearing within thirty days after the giving of notice of such determination.

5. To provide that any party, pursuant to such rules and regulations as the tribunal may prescribe, after a petition requesting a hearing has been filed with the division, may file a motion with the tribunal to

dismiss the petition on the following grounds:

- (i) a defense is founded upon documentary evidence; or
- (ii) the tribunal lacks jurisdiction of the subject matter of the petition; or
- (iii) the petitioner lacks legal capacity to petition; or
- (iv) there is an action pending between the same parties on the same controversy in a court of any state or the United States; an administrative law judge need not dismiss upon this ground but may make such determination as justice requires; or
- (v) the petition may not be maintained because of discharge in bankruptcy, infancy or other disability of the moving party, payment, release, or statute of limitation; or
- (vi) the pleading fails to state a cause for relief; or
- (vii) the tribunal lacks jurisdiction over the taxpayer; or
- (viii) the tribunal should not proceed in the absence of a person who should be a party.

Such motion to dismiss and all supporting documents shall be reviewed by an administrative law judge who shall issue a determination granting or denying the motion. Such a determination denying the motion shall not be subject to review by the tribunal. The tribunal of its own motion may, upon notice to the parties, issue a decision dismissing the petition on the grounds set forth in paragraphs (ii) and (vii) of this subdivision. Where not otherwise inconsistent with the provisions of this chapter, a motion filed pursuant to this subdivision shall be subject to the same provisions as motions filed pursuant to section three thousand two hundred eleven of the civil practice law and rules.

6. To provide that any party, pursuant to such rules and regulations as the tribunal may prescribe, after a petition requesting a hearing has been filed with the division and after issue is joined, may file a motion with the tribunal for summary determination. Such motion shall be supported by an affidavit, by a copy of the pleadings and by other available proof. The affidavit, made by a person having knowledge of the facts, shall recite all the material facts and show that there is no material issue of fact, and that the facts mandate judgment in the moving party's favor. The motion and all supporting documents shall be

reviewed by an administrative law judge. The motion shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of a party. The motion shall be denied if any party shows facts sufficient to require a hearing of any issue of fact. Where it appears that a party, other than the moving party, is entitled to a summary determination, the administrative law judge may grant such determination without the necessity of a cross-motion. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot be stated, the administrative law judge may deny the motion or may order a continuance to permit affidavits or admissions to be obtained and may make such other order as may be just. Where not otherwise inconsistent with the provisions of this chapter, a motion filed pursuant to this subdivision shall be subject to the same provisions as motions filed pursuant to section three thousand two hundred twelve of the civil practice law and rules.

7. To provide for a review of the determination of an administrative law judge if any party to a proceeding conducted before such administrative law judge, within thirty days after the giving of notice of such determination, takes exception to the determination. A determination by an administrative law judge denying a motion filed pursuant to subdivision six of this section shall not be subject to review by the tribunal. The tribunal in its discretion may grant oral argument. The tribunal may also grant an extension of time for filing an exception provided an application for such extension is filed within the time period for taking exception to a determination under this subdivision, and if good cause is shown. The tribunal shall promulgate rules and regulations as to what constitutes good cause. After such review the tribunal shall issue a decision either affirming, reversing or modifying such determination, or the tribunal may remand the case for additional proceedings before the administrative law judge. Such decision shall include a statement setting forth the facts which formed the basis of the decision on the issues raised before the tribunal. The tribunal shall have the authority to rule on the validity of the

regulations of the commissioner of taxation and finance where such regulations are at issue. Such decision shall be issued within six months from the date of notice to the tribunal that exception is being taken to an administrative law judge's determination, except that where oral argument is granted or written arguments are submitted such six month period will commence to run on the date that such oral argument was concluded or written argument received by the tribunal, whichever was later.

8. To provide that hearings, other than hearings provided for by section two thousand twelve of this article, conducted before an administrative law judge and any oral proceedings conducted before the tax appeals tribunal shall be stenographically reported.

9. To publish and make available to the public all determinations rendered by an administrative law judge and all decisions rendered by the tribunal after a review of an administrative law judge's determination. The tribunal may charge a reasonable fee for a copy of such determination or decision.

10. To take testimony and proofs, administer oaths, take affidavits and certify acknowledgements in relation to any proceeding conducted pursuant to the authority of the division of tax appeals. The tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents pertinent to the proceedings which it is authorized to conduct, and to examine them in relation to any matter which it has power to investigate and to issue commissions for the examination of witnesses who are out of the state or unable to attend proceedings conducted pursuant to the authority of the division or excused from attendance of such proceedings. The tribunal may designate and authorize by resolution, duly entered upon its minutes, officers, administrative law judges and other employees of the division to exercise any of the powers or perform any of the functions provided for in this subdivision. A subpoena issued under this subdivision shall be regulated by the civil practice law and rules. Any person who shall testify falsely in any proceeding conducted pursuant to the authority of the division shall be guilty of and punishable for

perjury.

Cross reference: For criminal penalties, see article thirty-seven of this chapter.

11. To provide that an attorney for any party at a hearing conducted before an administrative law judge may issue a subpoena as provided in the civil practice law and rules.

12. To have the same power and authority as the commissioner of taxation and finance in any instance where such commissioner is authorized to impose, modify or waive interest, additions to tax or civil penalties under this chapter, the environmental conservation law, the general city law, or in any local law, ordinance or resolution imposing taxes pursuant to the authority thereof, and to designate and authorize by resolution of the tax appeals tribunal, duly entered upon its minutes, officers, administrative law judges, and other employees of the division to perform any of such functions.

13. To collect, compile and prepare for publication statistics and other data with respect to the operations of the division of tax appeals, and to submit annually to the governor, the temporary president of the senate and the speaker of the assembly a report on such operations including but not limited to, the number of proceedings initiated, the types of dispositions made and the number of proceedings pending.

14. To make, adopt and amend such rules and regulations appropriate for the exercise of its powers and the performance of its duties, including rules of practice and procedure.

15. To have all other powers and perform such other duties as are necessary and proper to operate and administer the division of tax appeals consistent with the purposes of such division described in this article.

§ 2008. Commencement of proceedings. 1. All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting any written notice of the division of taxation, including any electronic notice provided in accordance with section thirty-five of this chapter, which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which expressly gives a person the right to a hearing in the division of tax appeals under this chapter or other law. Provided, however, that any written communications of the division of taxation that advise a taxpayer of a past-due tax liability, as defined in section one hundred seventy-one-v of this chapter, shall not give a person the right to a hearing in the division of tax appeals.

2. Expedited hearings. (a) Notwithstanding any provision of law to the contrary, any person who receives a written notice that advises that person of (i) the proposed cancellation, revocation, or suspension of a license, permit, registration, or other credential issued under the authority of this chapter excluding a certificate of registration of a retail dealer under section four hundred eighty-a of this chapter, (ii) the denial of an application for a license, permit, registration, or other credential issued under the authority of this chapter excluding an application for registration as a retail dealer under section four hundred eighty-a of this chapter and an application to renew a certificate of authority filed pursuant to paragraph five of subdivision (a) of section one thousand one hundred thirty-four of this chapter and any other law, or, (iii) the imposition of a fraud penalty under this chapter, must file a petition with the division of tax appeals within thirty days of the mailing of that notice (unless that person has requested a conciliation conference as provided in subdivision three-a of section one hundred seventy of this chapter), or the cancellation, revocation, suspension, denial, or penalty will be permanently and irrevocably fixed. An expedited hearing must be scheduled within ten business days of receipt of the petition.

(b) In the case of any expedited hearing provided for under this

subdivision, the administrative law judge must render a decision within thirty days from receipt of the petition. When exception is taken to an administrative law judge's determination, the tax appeals tribunal must issue its decision within three months from receipt of the petition. Any request by a party that delays the expedited hearing process will extend the time limitations imposed on the tribunal or the administrative law judge to issue a decision or determination. The tribunal or administrative law judge may not approve any postponement or other delay without a showing of good cause by the moving party and must render a default determination or decision against the dilatory party for any unwarranted delay.

(c) In any case where an expedited hearing is required under this subdivision, if the commissioner believes that the collection of any tax or the public safety will be jeopardized by delay, he or she may immediately cancel, revoke, or suspend a license, permit, registration, or other credential issued under the authority of this chapter before the commencement of those proceedings. Written notice of the cancellation, revocation, or suspension must be given to the licensee, permittee, registrant, or otherwise credentialed person by registered or certified mail or personal service as provided by the civil practice law and rules. The license, permit, registration, or other credential will be permanently and irrevocably cancelled, revoked, or suspended, unless the licensee, permittee, registrant, or otherwise credentialed person, within thirty days of receipt of the written notice, files a petition with the division of tax appeals to review the cancellation, revocation, or suspension. An expedited hearing must be scheduled within ten business days of receipt of the petition.

§ 2010. Administrative law judges. 1. The tax appeals tribunal shall appoint administrative law judges who shall be authorized to conduct any hearing or motion procedure authorized to be held within the division of tax appeals. Administrative law judges shall be in the classified civil service.

2. The tax appeals tribunal acting in cooperation with the state civil service commission shall establish standards to govern the selection and

appointment of administrative law judges. These standards shall be designed to assure that persons appointed as administrative law judges have the ability to conduct administrative adjudicatory proceedings fairly and impartially. These standards shall not require prior experience in the department of taxation and finance.

3. An administrative law judge shall render a determination after a hearing, within six months after submission of briefs subsequent to completion of such a hearing or, if such briefs are not submitted, then within six months after completion of such a hearing. Such six month period may be extended by the administrative law judge, for good cause shown, to no more than three additional months. If the administrative law judge fails to render a determination within such six month period (or such period as extended pursuant to this subdivision), the petitioner for such hearing may institute a proceeding under article seventy-eight of the civil practice law and rules to compel the issuance of such determination.

4. A determination issued by an administrative law judge shall finally decide the matters in controversy unless any party to the hearing takes exception by timely requesting a review by the tax appeals tribunal as provided for in section two thousand six of this article.

5. Determinations issued by administrative law judges shall not be cited, shall not be considered as precedent nor be given any force or effect in any other proceedings conducted pursuant to the authority of the division or in any judicial proceedings conducted in this state.

§ 2012. Small claims unit. There shall be established in the division of tax appeals a small claims unit. Such unit may hear any case where the amount in controversy is not in excess of an amount to be prescribed by regulations of the tax appeals tribunal. However, the amount so prescribed may not be less than twelve thousand dollars, excluding penalty and interest, except that with respect to controversies arising out of taxes imposed by article twenty-eight or pursuant to the authority of article twenty-nine of this chapter, the amount so

prescribed shall not be less than twenty-five thousand dollars, excluding penalty and interest. The option to proceed in the small claims unit shall be determined by the petitioner. At any time prior to the conclusion of a hearing in the small claims unit, a petitioner may by written notice to the secretary to the tax appeals tribunal discontinue such small claims proceeding and request that it be transferred to a proceeding conducted before an administrative law judge. Such transfer shall be effectuated by such written notice and such discontinuance shall be without prejudice to any subsequent proceeding before an administrative law judge. The hearing in the small claims part shall be informal and such evidence and testimony that the presiding officer of the small claims proceeding deems necessary or desirable for a just and equitable determination shall be heard or received. All testimony shall be given under oath or affirmation. The final determination of the presiding officer in the small claims unit shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals, by the tax appeals tribunal or by any court of the state. However, the tax appeals tribunal may order a rehearing upon proof or allegation of misconduct by the presiding officer of the small claims proceeding. The division shall not be required to publish determinations issued by the small claims unit and such determinations of the small claims unit shall not be cited, shall not be considered as precedent nor be given any force or effect in any other proceeding conducted pursuant to the authority of the division or in any other judicial proceedings conducted in this state.

§ 2014. Representation of petitioners. 1. Appearances in proceedings conducted by an administrative law judge or before the tax appeals tribunal may be by the petitioner or a representative of the petitioner who is at least eighteen years of age, of the petitioner's choosing, including, but not limited to, the petitioner's spouse or other family member, by an attorney admitted to practice in the courts of record of this state, by a certified public accountant licensed in this state, by an enrolled agent enrolled to practice before the internal revenue service, by a public accountant licensed in this state or by a tax return preparer registered in this state. The tribunal may allow any

attorney, certified public accountant, or licensed public accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a petitioner in proceedings before the tribunal for a particular matter. In addition, the tax appeals tribunal may promulgate rules and regulations to permit a corporation to be represented by one of its officers or employees.

2. In proceedings conducted in the small claims unit, the representatives authorized in subdivision one of this section may appear and represent a petitioner.

3. The division of taxation shall be represented in all proceedings conducted pursuant to the authority of the division of tax appeals by the chief counsel of the division of taxation or their representatives.

§ 2016. Judicial review. 1. A decision of the tax appeals tribunal, which is not subject to any further administrative review, shall finally and irrevocably decide all the issues which were raised in proceedings before the division of tax appeals upon which such decision is based unless the petitioner or the commissioner, or both, petitions for judicial review in the manner provided by article seventy-eight of the civil practice law and rules, except as otherwise provided in this section, within four months after notice of such decision is served by the tax appeals tribunal upon every party to the proceeding before such tribunal by certified mail or personal service. Such service by certified mail shall be complete upon deposit of such notice, enclosed in a post-paid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States postal service.

2. When the petitioner who commenced the proceeding before the division of tax appeals files a petition for judicial review, such petition shall designate the tax appeals tribunal and the commissioner as respondents in the proceeding for judicial review.

3. The commissioner, in consultation with the attorney general, may

petition for judicial review of a decision of the tax appeals tribunal that is premised on interpretation of the state or federal constitution, international law, federal law, the law of other states, or other legal matters that are beyond the purview of the state legislature. When the commissioner files a petition for judicial review, such petition shall designate the tax appeals tribunal and the petitioner who commenced the proceeding before the division of tax appeals as respondents.

4. The tax appeals tribunal shall not participate in proceedings for judicial review of its decisions and such proceedings for judicial review shall be commenced in the appellate division of the supreme court, third department. In all other respects the provisions and standards of article seventy-eight of the civil practice law and rules shall apply. The record to be reviewed in such proceedings for judicial review shall include the determination of the administrative law judge, the decision of the tax appeals tribunal, the stenographic transcript of the hearing before the administrative law judge, the transcript of any oral proceedings before the tax appeals tribunal and any exhibit or document submitted into evidence at any proceeding in the division of tax appeals upon which such decision is based.

5. Whenever the commissioner petitions for judicial review as provided in subdivision three of this section, any interest and penalty that, under the provisions of this chapter, would otherwise continue to accrue on the underlying tax liability that is the subject of the decision shall be stayed until fifteen days after the issuance of a judicial decision where no further appeals of such decision are allowed. For provisions regarding the awarding of costs, see section three thousand thirty of this chapter.

§ 2018. Frivolous petitions. If any petitioner commences or maintains a proceeding in the division of tax appeals primarily for delay, or if the petitioner's position in such proceeding is frivolous, then the tax appeals tribunal may impose a penalty against such petitioner of not more than five hundred dollars. The tax appeals tribunal shall promulgate rules and regulations as to what constitutes a frivolous

position. This penalty shall be in addition to any other penalty provided by law and shall be collected and distributed in the same manner as the tax to which the penalty relates.

§ 2020. Official seal. The tax appeals tribunal shall have and use an official seal; and the records, its proceedings and copies of all papers and documents in its possession and custody may be authenticated in the usual form under such seal and the signature of any one of the commissioners or the secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven.

§ 2022. Manner of execution of instruments by the tax appeals tribunal. Notwithstanding any other provision of law, whenever a statute authorizes or requires the tax appeals tribunal to execute an instrument, such instrument shall be executed by affixing the name of such tribunal and, underneath such name, it shall be signed by one or more of the members of such tribunal or by the secretary to such tribunal, and the seal of such tribunal shall be affixed. No acknowledgment of the execution of any such instrument shall be necessary for the purpose of the recordation thereof or for any other purpose.

§ 2024. Traveling expenses. The reasonable and necessary traveling and other expenses of the commissioners, officers, assistants, administrative law judges and other employees of the division of tax appeals, while actually engaged in the performance of their duties, outside of the city of Albany, or if such officer, assistant, administrative law judge or employee be in charge of or actually employed at a branch office of the division of tax appeals, the reasonable and necessary traveling and other expenses outside of the place in which such branch office is located, and the necessary traveling expenses incurred in the performance of their duties in the place in which their duties are performed of such officers, assistants,

administrative law judges and employees as are specifically authorized by order of the president of the tax appeals tribunal, shall be paid upon the order of the comptroller upon vouchers approved by the president of the tax appeals tribunal.

§ 2026. Construction. Whenever the terms "state tax commission", "state tax commissioners" or "tax commissioner" occur in this chapter or in any law where reference is made to such commission, commissioner or commissioners in relation to the administration of the administrative hearing process, as such process is described in this article, such terms shall be deemed to refer to the division of tax appeals or the tax appeals tribunal and in all other instances shall be deemed to refer to the division of taxation or the commissioner of taxation and finance.

ARTICLE 41

TAXPAYERS' BILL OF RIGHTS

PART I

TAXPAYERS' RIGHTS

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PART I

TAXPAYERS' RIGHTS

§ 3000. Short title. This article may be cited as the taxpayers' bill of rights.

§ 3002. Application. For the purposes of this article:

(a) Except as otherwise provided, the provisions of this article shall apply to any tax which is administered by the commissioner of taxation and finance (hereinafter the commissioner) and which is imposed by or authorized to be imposed pursuant to this chapter, article two-E of the general city law or section 27-0923 of the environmental conservation law. Any reference to tax or taxes in such sections shall include special assessments, fees and other impositions which are administered by the commissioner.

(b) The term "taxpayer" includes an individual, partnership, limited liability company, association, society, company, corporation, estate, trust, trustee, receiver, liquidator, fiduciary or other entity, whether appointed by a court or otherwise, liable for any tax imposed under or pursuant to the authority of the laws described in subdivision (a) of

this section or under a duty to perform an act for itself or for another under or pursuant to the authority of such laws.

(c) Except to the extent explicitly provided by any such sections, the failure of the commissioner or an officer or employee of the department to comply with a provision of such sections shall neither excuse any taxpayer from payment of any taxes shown to be owed by the taxpayer or excuse any taxpayer from compliance with any other duty imposed under or pursuant to the authority of the laws described in subdivision (a) of this section, nor cure any procedural defect in an administrative or judicial proceeding or case involving such taxpayer with respect to such taxes shown to be owed or compliance with any such duty.

(d) The provisions of this article shall also apply to all private contractors, subcontractors, and employees thereof, under contract with the department for collection of outstanding tax liability.

§ 3003. Content of tax due, deficiency, and other notices. Any first letter of proposed deficiency or determination (commonly called a thirty day letter) issued by the commissioner, and any notice and demand, notice of deficiency or notice of determination which is issued by the commissioner, which is manually initiated and which is the first such letter or notice issued to the taxpayer with respect to the subject matter of such notice, shall describe the basis for (such as the statutory or regulatory law, or judicial or tax appeals tribunal decision), and identify the amounts (if any) of the tax due. An inadequate description under this section shall not invalidate such letter or notice.

§ 3004. Disclosure of rights of taxpayers. (a) The commissioner shall, as soon as practicable, but not later than one hundred eighty days after the effective date of this article, prepare a statement which sets forth in simple and nontechnical terms:

(1) the rights of a taxpayer and the obligations of the division of taxation of the department of taxation and finance during an audit;

(2) the procedures by which a taxpayer may appeal or seek review of any adverse decision of the department, including administrative and

judicial appeals;

(3) the procedure for filing and processing refund claims and filing of taxpayer complaints;

(4) the procedures which the department may use in enforcing taxes.

(b) The commissioner shall transmit drafts of the statement required under subdivision (a) of this section, or proposed revision of any such statement, to the chairpersons of the senate finance committee and the assembly ways and means committee and to the director of the division of the budget on the same day.

(c) The statements prepared in accordance with this section shall be distributed by the commissioner to all taxpayers the commissioner contacts (other than by providing tax forms) with respect to the determination or collection of any tax, the cancellation, revocation or suspension of a license, permit or registration or the denial of an application for a license, permit or registration. The commissioner shall take such actions as the commissioner deems necessary to assure that such distribution does not result in multiple statements being sent to any one taxpayer.

§ 3004-a. Disclosure of overpayment to taxpayer. (a) The department shall disclose to a taxpayer all instances of overpayment of tax by such taxpayer discovered by the department during the course of an audit, assessment, collection or enforcement proceeding.

(b) The time within which a taxpayer may apply for a refund or claim a credit for an overpayment of tax disclosed pursuant to this section shall be one hundred twenty days from the date that notice of disclosure is given to such taxpayer by the department. Failure to apply for a refund or credit within the one hundred twenty days shall result in the loss of the right to apply for a refund or credit. Provided, that this subdivision shall not reduce the time within which a taxpayer may claim a credit or refund of an overpayment of tax pursuant to any other provision of this chapter or any other applicable law.

(c) Nothing in this section shall be construed as requiring or permitting the giving of notice or the payment of a refund or granting of a credit with respect to a period which, at the time such overpayment is discovered by the department, is not open for assessment or refund by

virtue of any period of limitations provided for in any tax.

§ 3005. Requirements of certain department letters, notices and documents. The division of taxation or the division of tax appeals, as the case may be, shall include a return address in every (a) letter to a taxpayer regarding the taxpayer's liability for tax, (b) notice which gives a person the right to a hearing under any tax, (c) billing or collection document and (d) administrative law judge determination and tribunal decision, to which the taxpayer may write with questions regarding the letter, notice, document, determination or decision. Such notices and documents described in subdivisions (b) and (c) of this section shall also include a telephone number which the taxpayer may call with questions regarding the notice or document. Such address or telephone number may be within the division of taxation or the division of tax appeals, or within another appropriate state or other agency, and may be included in the letter, notice, document, determination or decision, or on a separate, accompanying document. Nothing in this section shall be construed to prevent either such division from including an address or telephone number in other letters, notices or documents sent to taxpayers or other persons.

§ 3006. Procedures involving taxpayer interviews. (a) Recording of interviews.

(1) Recording by taxpayer. Any officer or employee of the division of taxation in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax, the cancellation, revocation or suspension of a license, permit or registration or the denial of an application for a license, permit or registration shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

(2) Recording by division of taxation officer or employee. An officer or employee of the division of taxation may record any interview described in paragraph one of this subdivision if such officer or employee:

(A) provides advance notice of such recording to the taxpayer, and
(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording, but only if the taxpayer provides reimbursement for the actual cost of the transcription and reproduction of such transcript or copy.

(b) Safeguards. (1) Explanation of processes. An officer or employee of the division of taxation shall before or at an initial interview provide to the taxpayer:

(A) in the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process, or

(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process,

(C) in the case of an in-person interview with the taxpayer relating to the cancellation, revocation or suspension of a license, permit or registration or the denial of an application for a license, permit or registration, an explanation of the administrative hearing and judicial review processes and the taxpayer's rights under such processes.

(2) Right of consultation. If the taxpayer clearly states to an officer or employee of the division of taxation at any time during the interview (other than an interview initiated by a subpoena to examine and inspect witnesses or books, records or other papers) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, or any other person permitted to represent the taxpayer, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

(c) Representatives holding power of attorney. Any attorney, certified public accountant, an enrolled agent, or any other person permitted to represent the taxpayer who is not disbarred or suspended from practice and who has a written power of attorney executed by the taxpayer, may be authorized by such taxpayer to represent the taxpayer in any interview described in subdivision (a) of this section. An officer or employee of the division may not require a taxpayer to accompany the representative in the absence of a subpoena to examine and inspect the taxpayer or the taxpayer's books, records or other papers. Such an officer or employee,

with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of a division of taxation examination or investigation of the taxpayer.

(d) Section not to apply to certain investigations. This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the division of taxation.

(e) For purposes of this section, any reference to tax shall also include any associated penalty, addition to tax or interest imposed under or pursuant to the authority of any tax.

§ 3008. Abatement of certain interest, penalties and additions to tax.

(a) Interest attributable to unreasonable errors and delays by the department. (1) In the case of any assessment or final determination of interest on:

(A) any deficiency or any tax finally determined to be due attributable in whole or in part to any unreasonable error or delay by an officer or employee of the department (acting in his or her official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax to the extent that any unreasonable error or delay in such payment is attributable to such officer or employee being erroneous or dilatory in performing a ministerial or managerial act, the commissioner may abate the assessment or final determination of all or any part of such interest for any period.

(2) For purposes of paragraph one of this subdivision, an unreasonable error or delay shall be taken into account only if no significant aspect of such unreasonable error or delay can be attributed to the taxpayer involved, and after the department has contacted the taxpayer in writing with respect to such deficiency, tax finally determined to be due or payment. The commissioner shall determine what constitutes timely performance of various ministerial or managerial acts performed under or pursuant to the authority of this chapter, the general city law and section 27-0923 of the environmental conservation law. Any regulations adopted with respect to other provisions of this subdivision shall conform, to the extent practicable, with corresponding federal

regulations under the comparable provisions of the laws of the United States. Administrative and judicial review of abatements under this subdivision shall be limited to review of whether failure to abate would be widely perceived as grossly unfair.

(b) Abatement of any penalty or addition to tax or excess interest attributable to erroneous written advice by the department of taxation and finance.

(1) The commissioner shall abate any portion of any penalty or addition to tax or excess interest attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the department of taxation and finance, acting in such officer's or employee's official capacity.

(2) Paragraph one of this subdivision shall apply only if:

(A) the written advice was reasonably relied upon by the taxpayer and was in response to specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.

(3) This subdivision shall not be construed to require the department to provide written advice to taxpayers or other persons or entities.

(c) Assessments attributable to certain mathematical errors by the department. In the case of an assessment of any tax imposed by or pursuant to the authority of article twenty-two, thirty, thirty-A or thirty-B of this chapter or article two-E of the general city law attributable in whole or in part to a mathematical error described in subparagraph (A) of paragraph two of subsection (g) of section sixty-two hundred thirteen of the federal internal revenue code, if the return was prepared by an officer or employee of the department acting in his or her official capacity to provide assistance to taxpayers in the preparation of income tax returns, the commissioner is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the tenth day following the date of notice and demand by the commissioner for payment of the deficiency.

(d) Interest attributable to misappropriation of taxpayer payments.

(1) The commissioner shall be authorized to abate, for the period specified in paragraph two of this subdivision, any assessment or final

determination of interest attributable to the misappropriation of a taxpayer's payment if:

(A) the taxpayer timely tenders payment to the department for a liability incurred under any tax, and the taxpayer's account with the department is not properly credited with such payment due to misappropriation thereof;

(B) the taxpayer does not cause, or in any way contribute to, the misappropriation of such payment; and

(C) the taxpayer tenders a replacement payment to the department in the original amount of such tax due no later than one year from the date of mailing of notice from the department of failure to pay.

(2) The commissioner shall be authorized to abate any assessment or final determination of interest pursuant to this subdivision for some or all of the period from the date of the underpayment to (A) the date which is one year from the date of mailing of the department's notice of failure to pay, (B) the date which is one year from the date the taxpayer discovers that the payment was not properly credited to the taxpayer's account or (C) thirty days from the date the taxpayer recovers use of the misappropriated funds, whichever is earliest.

(3) For purposes of this subdivision, the term "misappropriation" means circumstances in which a person wrongfully intercepts a taxpayer's payment tendered to the department prior to the department crediting the taxpayer's account, and obtains use of the taxpayer's funds.

§ 3010. Agreements for payments of tax liability in installments. (a) Authorization of agreements. The commissioner is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax (including any interest, penalty or addition to tax) in installment payments if the commissioner determines that such agreement will facilitate collection of such liability.

(b) Extent to which agreements remain in effect. (1) Except as otherwise provided in this subdivision, any agreement entered into by the commissioner under subdivision (a) of this section shall remain in effect for the term of the agreement.

(2) The commissioner may terminate any agreement entered into by the

commissioner under subdivision (a) of this section if:

(A) information which the taxpayer provided to the commissioner prior to the date such agreement was entered into was inaccurate or incomplete, or

(B) the commissioner believes that collection of any liability to which an agreement under this section relates is in jeopardy.

(3) If the commissioner finds that the financial condition of a taxpayer with whom the commissioner has entered into an agreement under subdivision (a) of this section has significantly changed, the commissioner may alter, modify, or terminate such agreement.

(4) The commissioner may alter, modify, or terminate an agreement entered into by the commissioner under subdivision (a) of this section in the case of the failure of the taxpayer:

(A) to pay any installment at the time such installment is due under such agreement,

(B) to pay any other tax liability at the time such liability is due, or

(C) to provide a financial condition update as requested by the commissioner.

(5) The commissioner may not take any action under paragraph two, three or four of this subdivision unless:

(A) a notice of such action is provided to the taxpayer not later than thirty days prior to such action, and

(B) such notice includes an explanation why the commissioner intends to take such action.

The preceding sentence shall not apply in any case in which the commissioner believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(c) Nothing in this section should be construed to prevent a taxpayer from prepaying in whole or in part any outstanding liability under any agreement the taxpayer enters into with the commissioner.

§ 3012. Basis for evaluation of department employees. (a) The department shall not use records of tax enforcement results:

(1) as the primary criterion to evaluate officers or employees

directly involved in collection activities and their immediate supervisors, or

(2) to impose or suggest production quotas or goals with respect to officers or employees described in this subdivision.

(b) Provided, however, forecasts of enforcement results may be made and communicated for planning purposes; tax enforcement results may be accumulated, tabulated, published and used for management and control of tax administration resources so long as tax enforcement results tabulations are not used as the primary criterion to evaluate an officer or employee described in subdivision (a) of this section or to impose or suggest production quotas or goals; in the discharge of a manager's responsibilities, but subject to the provisions of paragraph one of subdivision (a) of this section, a manager may raise questions with an officer or employee about the number of cases the officer or employee has processed, the amount of time the officer or employee has been spending on the individual cases, or the kind of results the officer or employee has been obtaining.

*** § 3013. Method of payment of personal income tax refunds; notice.**

(a) Notwithstanding the adoption by the commissioner of any prepaid debit card or direct deposit program for payment of personal income tax refunds, all taxpayers are entitled:

(1) to receive personal income tax refunds by paper check; and

(2) to opt out of any prepaid debit card or direct deposit program for payment of tax refunds.

(b) The department shall provide taxpayers with a clear written statement setting forth the taxpayer's right:

(1) to receive tax refund payments by paper check; and

(2) to opt out of any prepaid debit card or direct deposit program.

(c) In the event that the commissioner elects to implement a program providing for payment of personal income tax refunds by prepaid debit card or direct deposit to a designated account of the taxpayer, the department shall amend the forms used to file personal income tax returns to reflect, in the area designated for selection of options for processing of refunds, that the taxpayer has the option of receiving his or her tax refund by personal check and shall provide a box which the

taxpayer may check to select that option.

(d) In any written notice regarding a prepaid debit card program for the payment of tax refunds, the department shall describe to taxpayers all of the features of the debit card program (e.g., withdrawal at any ATM or point-of-sale use), including any fee or fees which may be charged to the taxpayer in accessing his or her tax refund.

* NB Repealed November 15, 2026

PART II

LIENS AND LEVIES

§ 3016. Notice to person liable to pay tax. Before the commissioner collects any tax by levy, the commissioner shall give prominent written notice to the person liable to pay the same that, in like manner as a judgment creditor, the department has certain rights to enforce the warrant by levying upon real and personal property of the taxpayer. Such statement shall be made in clear and concise language readily comprehensible to the average reader and shall be set off from any other text or notice.

§ 3017. Notice to taxpayer of exempt property. In or with any notice to a taxpayer provided under subdivision (d) of section fifty-two hundred twenty-two of the civil practice law and rules, or under subdivision (c) of section fifty-two hundred thirty-two of the civil practice law and rules, at the time and in the manner such notice is provided, there shall also be provided to such taxpayer a list in summary form of substantially all property which is exempt from being applied to the satisfaction of tax warrants, including property listed in sections fifty-two hundred five and fifty-two hundred six of the civil practice law and rules. At any time subsequent to the publication of a notice of sale and prior to the sale of real property pursuant to section fifty-two hundred thirty-six of the civil practice law and rules, a sheriff or an officer or employee of the department acting in the capacity of a sheriff shall mail by first class mail, or shall

personally deliver, to each taxpayer who is a natural person a copy of the notice required by this section. Where a single notice is provided to a taxpayer pursuant to this section, it shall be deemed to be sufficient notice for purposes of complying with subdivision (d) of section fifty-two hundred twenty-two and subdivision (c) of section fifty-two hundred thirty-two of the civil practice law and rules if it contains the same basic text or information contained in the notice required by such subdivisions. This section shall not apply to an income execution under section fifty-two hundred thirty-one of the civil practice law and rules.

§ 3018. Uneconomical levies. No levy may be made on any property if the amount of the expenses which the commissioner estimates (at the time of levy) would be incurred by the commissioner with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

§ 3020. Sales of seized property. (a) Any sale of property subject to a tax lien must be sold at the fair market value of the property at the time of the sale.

(b) The owner of any property seized by levy may request that the commissioner sell such property within sixty days after the request (or within a longer period if specified by the owner). The commissioner shall comply with the request unless the commissioner determines (and notifies the owner within such period) that such compliance would not be in the best interests of this state.

§ 3022. Authority to release levy and return property. (a) Release of levy and notice of release. (1) The commissioner shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if:

(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) release of such levy will facilitate the collection of such liability,

(C) the taxpayer has entered into an agreement under section three thousand ten of this article to satisfy such liability by means of installment payments and such agreement provides for the release of levy,

(D) the fair market value of the property exceeds such liability and release of a levy on a part of such property could be made without hindering the timely collection of such liability, or

(E) the commissioner has determined that such levy is creating an economic hardship due to the financial condition of an individual taxpayer.

(2) Expedited determination of certain business property. In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the commissioner shall provide for an expedited determination under paragraph one of this subdivision if levy upon such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) The release of levy on any property under paragraph one or two of this subdivision shall not prevent any subsequent levy on such property.

(b) Return of property. If the commissioner determines that property has been wrongfully levied upon, it shall be lawful for the commissioner to return:

(1) the specified property levied upon,

(2) the amount of money equal to the amount of money levied upon, or

(3) an amount of money equal to the fair market value of such property.

(c) Interest. Interest shall be allowed and paid at the rate established under section six hundred eighty-eight of this chapter on the amount of money or the fair market value of the property seized.

(d) Return of property in certain cases. If the commissioner determines that with respect to any property which has been levied upon:

(1) the levy on such property was premature or otherwise not in accordance with administrative procedures of the commissioner,

(2) the taxpayer has entered into an agreement under section three thousand ten of this article to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement

provides otherwise,

(3) the return of such property will facilitate the collection of the tax liability, or

(4) with the consent of the taxpayer or the commissioner, the return of such property would be in the best interests of the taxpayer (as determined by the commissioner) and the state of New York, the provisions of subdivision (b) of this section shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subdivision (c) of this section.

PART III PROCEEDINGS BY TAXPAYERS

§ 3030. Awarding of costs and certain fees. (a) In general. In any administrative or court proceeding which is brought by or against the commissioner in connection with the determination, collection, or refund of any tax, the prevailing party may be awarded a judgment or a settlement for:

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the department, and

(2) reasonable litigation costs incurred in connection with such court proceeding.

(b) Limitations. (1) Exhaustion of administrative remedies. A judgment for reasonable litigation costs shall not be awarded under subdivision (a) of this section in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the department. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

(2) Only costs allocable to the state. An award under subdivision (a) of this section shall be made only for reasonable litigation and administrative costs which are allocable to the state of New York and not to any other party.

(3) Costs denied where prevailing party protracts proceedings. No

award for reasonable litigation and administrative costs may be made under subdivision (a) of this section with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

(4) This section shall provide the exclusive means for a prevailing party to be awarded administrative and litigation costs incurred in connection with any administrative or court proceeding which is brought by or against the commissioner in connection with the determination, collection, or refund of any tax.

(c) Definitions. For purposes of this section:

(1) Reasonable litigation costs. The term "reasonable litigation costs" includes:

(A) reasonable court costs, and

(B) based upon prevailing market rates for the kind or quality of services furnished:

(i) the reasonable expenses of expert witnesses in connection with a court proceeding,

(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of seventy-five dollars per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.

(2) Reasonable administrative costs. The term "reasonable administrative costs" means:

(A) any administrative fees or similar charges imposed by the department, and

(B) expenses, costs, and fees described in subparagraph (B) of paragraph one of this subdivision, except that any determination made by the court under clause (ii) or (iii) of such subparagraph shall be made by the division of tax appeals in cases where the determination under subparagraph (C) of paragraph five of this subdivision of the awarding of reasonable administrative costs is made by the division of tax appeals. Such term shall only include costs incurred on or after the

date of the notice of deficiency, notice of determination or other document giving rise to the taxpayer's right to a hearing.

(3) Attorney's fees. For purposes of paragraphs one and two of this subdivision, fees for the services of an individual (whether or not an attorney) who is authorized to practice before the division of tax appeals shall be treated as fees for the services of an attorney.

(4) Burden of proof. For purposes of this section, "burden of proof" means the necessity or duty of proving, by a preponderance of the evidence, a fact or facts in dispute on an issue raised between the parties to a proceeding referred to in subdivision (a) of this section.

(5) Prevailing party. (A) In general. The term "prevailing party" means any party in any proceeding to which subdivision (a) of this section applies (other than the commissioner or any creditor of the taxpayer involved):

(i) who (I) has substantially prevailed with respect to the amount in controversy, or (II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

(ii) who (I) within thirty days of final judgment in the action, submits to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from an attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed (except to the extent differing procedures are established by rule of court), and (II) is an individual whose net worth did not exceed two million dollars at the time the civil action was filed, or is an owner of an unincorporated business, or any partnership, corporation, association, unit of local government or organization, the net worth of which did not exceed seven million dollars at the time the civil action was filed, and which had not more than five hundred employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the internal revenue code exempt from taxation under section 501(a) of such code, or a cooperative association as defined in the cooperative corporations law, may be a party regardless of the net worth of such organization or cooperative association.

(B) Exception if the commissioner establishes that the commissioner's

position was substantially justified.

(i) General rule. A party shall not be treated as the prevailing party in a proceeding to which subdivision (a) of this section applies if the commissioner establishes that the position of the commissioner in the proceeding was substantially justified.

(ii) Burden of proof. The commissioner shall have the burden of proof of establishing that the commissioner's position in a proceeding referred to in subdivision (a) of this section was substantially justified, in which event, a party shall not be treated as a prevailing party.

(iii) Presumption. For purposes of clause (i) of this subparagraph, the position of the commissioner shall be presumed not to be substantially justified if the department, inter alia, did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

(iv) Applicable published guidance. For purposes of clause (ii) of this subparagraph, the term "applicable published guidance" means (I) regulations, declaratory rulings, information releases, notices, announcements, and technical services bureau memoranda, and

(II) any of the following which are issued to the taxpayer: advisory opinions and opinions of counsel.

(C) Determination as to prevailing party. Any determination under this paragraph as to whether a party is a prevailing party shall be made by agreement of the parties or (i) in the case where the final determination with respect to tax is made at the administrative level, by the division of tax appeals, or (ii) in the case where such final determination is made by a court, the court.

(6) The term "administrative proceeding" means any procedure or other action before the division of taxation (such as the bureau of conciliation and mediation services) or division of tax appeals.

(7) The term "court proceeding" means any civil action brought in a court of the state of New York (including proceedings before the surrogate's courts under section nine hundred ninety-eight of this chapter).

(8) The term "position of the commissioner" means:

(A) the position taken by the commissioner in a judicial proceeding to which subdivision (a) of this section applies, and

(B) the position taken in an administrative proceeding to which subdivision (a) of this section applies as of the date of the notice of deficiency, notice of determination or other document giving rise to the taxpayer's right to a hearing.

(d) Multiple actions. For purposes of this section, in the case of:

(1) multiple actions which could have been joined or consolidated, or
(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single court proceeding in the same court, such actions or cases shall be treated as one court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

(e) Right of appeal. (1) Court proceedings. An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subdivision (a) of this section in a court proceeding, may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

(2) Administrative proceedings. A determination or decision granting or denying (in whole or in part) an award for reasonable administrative costs under subdivision (a) of this section by the division of tax appeals or the tax appeals tribunal shall be subject to exception or review in the same manner as the determination or decision.

§ 3032. Civil damages for failure to release a lien. (a) In general. A taxpayer may bring a civil action for damages against the state in the court of claims if any officer or employee of the department knowingly, or by reason of negligence, fails to release a lien on property of such taxpayer within forty days after the day on which (1) the commissioner finds that the liability for the amount assessed or determined, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable, or (2) there is furnished to the commissioner a surety bond issued by a surety company approved by the superintendent of financial services as to solvency or responsibility

and authorized to transact business in this state, or other security acceptable to the commissioner, that is conditioned upon the payment of the amount assessed or determined, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time) and is in accordance with such requirements relating to terms, conditions, and form of the bond or other acceptable security, as may be specified by regulation.

(b) Damages. In any action brought under subdivision (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of (1) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus (2) the costs of the action.

(c) Limitations. (1) Exhaustion of administrative remedies. The amount of damages awarded under subdivision (b) of this section may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the department which have been established pursuant to the commissioner's authority to compromise civil liability provided in subdivision eighteenth-a of section one hundred seventy-one of this chapter. In establishing administrative review procedures regarding claims for damages under this section, the commissioner is authorized to enter into contracts with private dispute resolution entities for the purpose of providing review of such claims and suggested compromises by independent third parties.

(2) Mitigation of damages. The amount of damages awarded under paragraph one of subdivision (b) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(d) Notice of failure to release lien. The commissioner shall by regulation prescribe reasonable procedures for a taxpayer to notify the commissioner of the failure to release a lien on the property of the taxpayer.

§ 3034. Civil damages for certain unauthorized collection actions.

(a) General. If, in connection with any collection of any tax with

respect to a taxpayer, any officer or employee of the department recklessly or intentionally disregards any provision of any tax, or any regulation promulgated under any of such taxes, such taxpayer may bring a civil action in the court of claims for damages against the state. Except as provided in section three thousand thirty-two of this article relating to civil damages for failure to release a lien, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages. In any action brought under subdivision (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of one hundred thousand dollars or the sum of (1) the actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and (2) the costs of the action.

(c) Limitations. (1) Exhaustion of administrative remedies. The amount of damages awarded under subdivision (b) of this section may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the department which have been established pursuant to the commissioner's authority to compromise civil liability provided in subdivision eighteenth-a of section one hundred seventy-one of this chapter. In establishing administrative review procedures regarding claims for damages under this section, the commissioner is authorized to enter into contracts with private dispute resolution entities for the purpose of providing review of such claims and suggested compromises by independent third parties.

(2) Mitigation of damages. The amount of damages awarded under paragraph one of subdivision (b) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

§ 3036. Civil actions by persons other than taxpayers. (a) Actions permitted. (1) Wrongful levy. If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose)

who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the state of New York in the court of claims. Such action may be brought without regard to whether such property has been surrendered to or sold by the commissioner.

(2) Surplus proceeds. If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which the levy arose) who claims an interest in or lien on such property junior to that of the state of New York and to be legally entitled to the surplus of the proceeds of such sale may bring a civil action against the state of New York in the court of claims.

(b) Adjudication. The court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

(1) Injunction. If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of this state in property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(2) Recovery of property. If the court determines that such property has been wrongfully levied upon, the court may:

(A) order the return of specific property if this state is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) if such property was sold, grant a judgment for an amount equal to the actual direct and consequential damages proven.

(3) Surplus proceeds. If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

(c) Validity of assessment. For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the department is based shall be conclusively presumed to be valid.

(d) Limitation on rights of action. No action may be maintained against any sheriff acting on behalf of the commissioner or any officer or employee of the department (or former sheriff, officer or employee) or his personal representative with respect to any acts for which an

action could be maintained under this section.

(e) Substitution of the state as party. If an action, which could be brought against the state under this section, is improperly brought against any sheriff acting on behalf of the commissioner or any officer or employee of the department (or former sheriff, officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the state as a party for such sheriff, officer or employee as of the time such action was commenced upon proper service of process on the state.

§ 3038. Civil damages for unauthorized disclosure of returns and return information. (a) General. (1) Disclosure by employee of the state. If any officer or employee of the state of New York knowingly, or by reason of negligence, discloses any return or report, any particulars set forth or disclosed in any return or report, or any other information with respect to a taxpayer in violation of any provision listed in section eighteen hundred twenty-five of this chapter, such taxpayer may bring a civil action for damages against the state in the court of claims.

(2) Disclosure by a person who is not an employee of the state. If a person who is not an officer or employee of the state knowingly, or by reason of negligence, discloses any return or report, any particulars set forth or disclosed in any return or report, or any other information with respect to a taxpayer in violation of any provision listed in section eighteen hundred twenty-five of this chapter, such taxpayer may bring a civil action for damages against such person.

(b) No liability for good faith but erroneous interpretation. No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of any of the provisions listed in section eighteen hundred twenty-five of this chapter.

(c) Damages. In any action brought under subdivision (a) of this section, upon a finding of a liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of (1) the greater of (A) one thousand dollars for each act of unauthorized disclosure with respect to which such defendant is found

liable, or (B) the sum of (i) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure, plus (ii) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, plus (2) the costs of the action.